

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 789 OF 2023

Raosaheb s/o Baburao Shirke

Appellant

Versus

The State of Maharashtra & another

Respondents

Mr. R. R. Karpe, Advocate for the appellant.

Mr. G. O. Wattamwar, APP for the State.

Ms. Jayashree Nawale, Advocate (appointed) for respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 9th OCTOBER, 2023.

PER COURT :

1. This appeal is against the order of rejection of regular bail in connection with Crime No. 013/2023 registered with Mirajgaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 376, 504, 506 of Indian Penal Code and under Sections 3(2), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. First Information Report is given to the concerned police station on 17th January, 2023 at around 21.31 hours reporting the incident that took place on 16th January, 2023 at 1.00 pm. It is the contention of the victim that she was present in the house and the

present appellant entered the house and established physical relations with her. It is also stated that appellant threatened her to kill if she disclose the incident to anyone. After about 10 to 15 minutes of the incident, when her husband came back she narrated the incident to him. Both of them went to the police station and report came to be lodged.

3. Learned counsel for appellant submits that though in the First Information Report it is stated by the informant that after 10 to 15 minutes of the occurrence of the incident he husband came home however, in the statement recorded during investigation, husband of the informant stated that he had seen the accused leaving the house. Without prejudice, it is his contention that this could be a case of false implication only for the reason that husband of the informant came to know about the incident in question. He further drew attention of this Court to the Medical certificate which does not show causing of any injury to the victim.

4. Learned counsel for informant opposed the said submission by point out First Information Report as well as charge-sheet placed on record. It is her contention that the informant has

narrated the incident to the police, to her husband as well as Medical Officer. Learned counsel for the victim apprehends pressurising of victim and witnesses if the appellant is released on bail. Learned counsel for the appellant makes a statement that the appellant will stay away from the village for a period of three months.

5. Learned APP also opposed the appeal by contending that the delay in lodging First Information Report by itself cannot become a ground to infer false implication. According to him, in our society, it is difficult for a woman to report such incident immediately to the police.

6. There can be no doubt about there is substance in the contention of learned APP and learned counsel for the informant that delay cannot become the sole reason to discard the statement of the victim in the offence like one in hand. However, at the same time, contention of learned counsel for the appellant cannot be discarded when he is able to show that there is material inconsistency in the statement of the informant that after the incident was over, after about 10 to 15 minutes her husband came to home and thereafter she narrated the incident to him, whereas, her husband claims to

have seen the appellant leaving the house. At this stage, therefore, it cannot be completely ruled out that it could be a case of consensual relationship as suggested by the appellant. Prima facie, there is support to such theory on account of absence of any injury caused to the informant, though it is stated that against her will physical relationship was established. Having regard to these facts and considering factum of filing of charge-sheet and completion of investigation, there is no propriety to continue to keep appellant to be kept in custody. Apprehension of prosecution has been taken care by the undertaking given on behalf of the appellant to stay away from village for period of three months. Hence, the following order :-

ORDER

(i) Appeal is allowed.

(ii) The appellant be released on bail in connection with Crime No. 013/2023 registered with Mirajgaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 376, 504, 506 of Indian Penal Code and under Sections 3(2), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, on furnishing PB and SB of Rs. 30,000/- (Rs. Thirty Thousand only) with one or two sureties in the like amount.

(iii) He shall attend the concerned police station once in a month for period of six months from today.

(iv) He shall not contact the witnesses directly or indirectly.

(v) He shall not interfere with the evidence in any manner whatsoever.

(vi) He is directed to stay away from the village for a period of three months.

(vii) Fees of the appointed counsel is quantified at Rs. 6,000/- and it is to be paid by the High Court Legal Services Authority, sub Committee, Aurangabad.

(viii) Bail before Trial Court.

(R. M. JOSHI)
Judge