

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 997 OF 2023

Pradip Madhukar Kadam

Appellant

Versus

The State of Maharashtra & another

Respondents

Mr. S. N. Patne, Advocate for the appellant.

Mrs. G. L. Deshpande, APP for the State.

Mrs. R. R. Tandale, Advocate (appointed) for respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 6th NOVEMBER, 2023.

PER COURT :

1. Being aggrieved by rejection of regular bail in connection with Crime No. 49/2023, registered with Lohara Police Station, Tq. Lohara, Dist. Osmanabad, for the offences punishable under Sections 376, 506, 109 read with Section 34 of Indian Penal Code and Sections 3(2), 3(v), 3(2)(vi), 3(1)(w)(i) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, this appeal is filed under Section 14A of the Act.

2. First informant reported police that she was in love relations with the appellant. However, according to her, due to intervention of brother of the appellant, said relationship was

discontinued. It is alleged that on 12th March, 2023, appellant along with co-accused forcibly entered the house and present appellant committed rape on her. It is stated that she raised shouts and her daughter woke up and thereafter her parents and brother came to her house and then both accused fled away.

3. Learned counsel for appellant submits that as per the First Information Report, it could be a case of consensual relationship between the parties. He drew attention of the Court to the medical report which does not indicate causing of any external injury. According to him, after the informant was subjected to forcible sexual relationship, possibility of resistance cannot be ruled out and hence causing of injuries was probable. He further submits that this can be a case of consensual relationship even on the date of the incident and in all probabilities since it came to be known to others, report came to be lodged.

4. Learned APP and learned counsel for informant opposed the appeal essentially relying upon the statement of informant recorded under Section 164 of Code of Criminal Procedure as well as statement of her parents and brother. It is submitted that all these

statements clearly indicate presence of accused at the spot. According to them, since the informant has clearly indicated in the First Information Report about discontinuation of relationship there is no reason to accept contention of learned counsel for the appellant that this can be a case of consensual relationship on the date of the incident.

5. Undisputedly, appellant and informant were in consensual relationship. First Information Report shows that the relationship established on the fateful day was forcible. In such circumstances, prima facie this Court finds substance in the contention of learned counsel for the appellant in absence of any external injury, there is reason to believe that this can be a case of consensual relationship even on that day. Most surprisingly, though the daughter of the informant was very well present in the house, during investigation her statement is not recorded. This Court is of prima facie view that it is a serious flaw in the investigation, creating doubt about occurrence of incident as claimed by informant. Suffice to say that learned counsel for the appellant was able to make out a case that this could be a case of consensual relationship between appellant and informant. Since charge-sheet is filed there is

no propriety in keeping the appellant behind bar. There are no criminal antecedents against the appellant. Hence, appeal is allowed.

6. Learned counsel for the appellant submits that informant is a labourer and she apprehends pressure at the hands of the appellant. Learned counsel for the appellant, on instructions, makes a statement that till conclusion of trial, appellant will not enter village Jewali (bk), Tq. Lohara, Dist. Osmanabad. This will take care of apprehension of informant. Hence, the following order :-

ORDER

- (i) Appeal is allowed.
- (ii) Appellant be released in connection with Crime No. 49/2023, registered with Lohara Police Station, Tq. Lohara, Dist. Osmanabad, for the offences punishable under Sections 376, 506, 109 read with Section 34 of the Indian Penal Code and Sections 3(2), 3(v), 3(2)(vi), 3(1)(w)(i) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, on furnishing PB and SB of Rs. 15,000/- (Rs. Fifteen Thousand only) with one surety in the like amount.
- (iii) He shall attend the concerned police station once in a week.

(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 further directed to cooperate the investigating agency for further investigation.

(R. M. JOSHI)
Judge

dyb