

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.977 OF 2022

Amol Pandurang Ingale,
Age 38 yrs., Occ. Agri.,
R/o Karegaon, Tq. Shirampur,
Dist. Ahmednagar.

... Appellant

... **Versus** ...

- 1 The State of Maharashtra,
Through Police Station Officer,
Newasa Police Station, Newasa,
Dist. Ahmednagar.
- 2 XYZ

... Respondents

...

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for appellant

Mr. A.M. Phule, APP for respondent No.1

Mr. Kunal Kale, Advocate (appointed) for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

DATE : 16th JANUARY, 2023

JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

- 1 Since the arguable points are made appeal is **admitted**.

2 Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act”) challenging the rejection of application under Section 438 of the Code of Criminal Procedure of the present appellant by learned Special Judge under the Atrocities Act, Newasa, Dist. Ahmednagar on 03.12.2022. Respondent No.2 has lodged First Information Report vide Crime No.920/2022 with Newasa Police Station, Dist. Ahmednagar on 27.10.2022, for the offence punishable under Sections 363, 366, 368, 376, 376(2)(n), 354, 354-D, 452, 506 of the Indian Penal Code, 1860 and under Sections, 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the appellant and respondent No.2 is said to be a member of scheduled caste.

3 Heard learned Advocate Mr. Shaikh Mazhar A. Jahagirdar for the appellant, learned APP Mr. A.M. Phule for respondent No.1 and learned Advocate Mr. Kunal Kale for respondent No.2.

4 Perusal of the First Information Report lodged by the respondent No.2 can be seen that she is a 24 years old married lady having a child. The First Information Report is too cryptic and it does not give the clear story. No

doubt, the First Information Report is not an encyclopedia, however, at least the basic facts should be included in the same. The First Information Report states that the accused used to roam around her house and then by snatching her son he used to give threat to kill him. She states that she kept calm because of the son and then the accused had abducted her. He was giving her threat that she should not give phone call to anybody otherwise he would kill her son. She says that she has tried to give phone call to her house but he was not handing over the phone. She was taken by the accused to Phaltan taluka and at that place she was ravished. When police came, at that time, he picked up her son and went in sugarcane crop and asked her that she should go along with him otherwise she would be killed. After going to another place for work, he used to confine her in the house and once when he had come she escaped and came to Nagar at her sister's place. She had given a phone call to her maternal uncle and she has a desire that he should be punished. This is the literal translation of the First Information Report. Further it states that in between 10.08.2022 to 26.10.2022 she was abducted and at various places the accused had sexual intercourse with her against her wish.

5 The evidence that has been collected up till now would show that the husband of the informant had given a missing report on 19.08.2022

stating that he had left his wife to her parental home in Newasa taluka on 16.08.2022 for the festival of Rakshabandhan. Then after two days i.e. on 18.08.2022 when the husband was at Newasa around 11.00 a.m., the wife gave phone call to him and told him that she has returned to the matrimonial home and would be going to the school of their daughter. He gave phone call to the wife around 1.30 p.m. but she has not picked up the call, therefore, he had given a call to the neighbour, it was told that the house is locked. Husband made inquiry with his brother-in-law, but then it was told that the informant and her son were left at the matrimonial home. Since both of them were missing he lodged the report. Thus, it is to be noted that there was no suspicion in the mind of the husband when he lodged the missing report. The police report contains general diary entry No.17 dated 27.10.2022 at 14.36 hours, wherein it is stated that the informant had returned along with her relative around 23.30 hours of 26.10.2022 at the Police Station and when she was asked to give statement, it was told that she will not give the statement now, but she would come back in the morning and would give statement. The informant remained present before Police Inspector on 27.10.2022 and gave statement that she was knowing the accused even prior to the marriage and they were in contact with each other. She had gone along with him on her own and then he had refused to maintain her and, therefore, she was annoyed with him. When she had given

a call to him, he is giving threat and, therefore, she wants to lodge a false offence against him. It is also mentioned in the said general diary details that Police Inspector told her that whatever is correct as per law would happen and she should lodge complaint about threat and even on that point the informant as well as her relatives got annoyed with the police officer and gave threat that they should take the First Information Report as they are dictating, an offence should be registered otherwise they would make a complaint to District Superintendent of Police. This fact has been noted by the entry officer. Note of the said entry ought to have been taken by the learned Special Judge. Thereafter on 28.10.2022 supplementary statement has been recorded, which contains more details than the First Information Report. The supplementary statements cannot be considered as First Information Report. Still, if at all it is to be taken, it can be seen that after the marriage it appears that the informant was in contact with the appellant. She states that on 18.08.2022 at about 11.00 a.m. the appellant had entered in the house forcibly and started outraging her modesty. When her son who was then aged 2½ started crying, she says that the appellant snatched him from her and, therefore, she kept quiet and then she says that the appellant had taken her along with the small child on motorcycle to village Gunaware, Tq. Phaltan, Dist. Satara viz. Ahmednagar, Daund, Baramati. She states that they reached Ghule Vasti around 5.00 a.m. on 19.08.2022. In fact, it is hard

to believe that she would not have had an opportunity in all the said journey to flee away or raise voice, especially, taking into consideration the fact that she was carrying child of 2½ years old and would not have stopped at such a place to have meals. She has not given the details in her supplementary statement also where they had stayed for such a long period i.e. from 19.08.2022 to 23.10.2022. The statements which have been taken up till now appears to be of the relatives of the informant. Further, interestingly the statement of the informant under Section 164 of the Code of Criminal Procedure has been taken by learned Judicial Magistrate First Class, Newasa, however, it is as cryptic as the First Information Report and it does not include whatever she has stated in her supplementary statement. Thus, it appears that this is a case of consensual nature and, therefore, there is no question of involvement of the offences under the Atrocities Act. The learned Special Judge unfortunately failed to take note of the police papers. The order, that is passed by the learned Special Judge, does not give an indication that he had even considered the police report/police papers. An order under the bail application without going through the police papers cannot be allowed to sustain, when all these facts of which note has been taken above would have been considered. Then, definitely the concern Judge would have come to the conclusion that prima facie no case is made out for attracting the offences under the Atrocities Act and, therefore, bar under Section 18 or 18-A

of the Atrocities Act could not have been inferred. It will have to be observed that time and again this Court is witnessing that the Special Judges under the Atrocities Act are not adhering to the ratio laid down in *Prathvi Raj Chauhan vs. Union of India, Writ Petition No.1015 of 2018* decided by Hon'ble Apex Court on 10.02.2020 as well as the decisions of this Court. Denial of bail on fanciful ground or failure to exercise the discretion to release an accused on bail in deserving case amounts to injustice and, therefore, the impugned order in this case deserves to be set aside. The said application ought to have been allowed by the learned Special Judge. Hence, following order.

ORDER

- 1 The appeal is hereby allowed.
- 2 The order passed by learned Special Judge, under the Atrocities Act, Newasa, Dist. Ahmednagar in Criminal Bail Application No.418/2022 dated 03.12.2022, is hereby set aside. Said application stands allowed.
- 3 In the event of arrest of the appellant **Amol Pandurang Ingale**, in connection with Crime No.920/2022 dated 27.10.2022 registered with Newasa Police Station, Dist. Ahmednagar, for the offence punishable under Sections 363, 366, 368, 376, 376(2)(n), 354, 354-D, 452, 506 of the Indian

Penal Code, 1860 and under Sections, 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

4 Appellant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence, in any manner.

5 Appellant shall cooperate with the investigation and shall attend Newasa Police Station, Dist. Ahmednagar, on every Monday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

6 The fees of the appointed Advocate is quantified at Rs.5,000/- (Rupees Five Thousand only), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)