

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 373 OF 2023

Kanta @ Kantu Jaimur Rathod

... Appellant

Versus

State of Maharashtra and Another

... Respondents

Mr. Nitin Satpute with Mr. Deepak Jadhav and Ms. Shaila Kanthe for the Appellant.

Ms. Sharmila Kaushik, APP for the Respondent–State.

Mr. Priyal G. Sarda for respondent No.2.

Mr. Madhav D. Reddy, ACP, Division-2, Solapur City, present

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : APRIL 03, 2023

P. C. :

1. Heard learned counsel for the parties.
2. By this appeal, preferred under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, “SC/ST Act”), the appellant seeks pre-arrest bail in connection with C.R. No.43 of 2023 registered with the Vijapur Naka Peth Police Station, Solapur for the alleged offences punishable under Section 376 of the Indian Penal Code and Section 3(2)(v) of the SC/ST Act. The appellant has also

challenged the impugned order dated 27.02.2023 passed by the learned Additional Sessions Judge, Solapur below Exh.1 in Criminal Bail Application No.137 of 2023, rejecting the appellant's application for bail.

3. Learned counsel for the appellant submits that a false case has been filed against the appellant by the Respondent No.2; that due to political rivalry, the appellant has been falsely implicated; that the police have not done proper investigation, inasmuch as, they have not collected the footage of the CCTV cameras of that day to show the appellant was not close to the spot in question; and, that the Respondent no.2 has antecedents.

4. Learned APP opposed the appeal. She submits that the police have conducted investigation with respect to the CCTV cameras. She submits that the recording of the CCTV footage of 29.01.2023 at about 6.30 p.m, is blurred. She further submits that the appellant was in the area where the incident took place. She further submits that the FIR was lodged soon after the incident of rape and the statement of the victim recorded under Section 164, is consistent with the FIR lodged by the Respondent No.2.

5. Learned counsel for the Respondent No.2 also opposed the appeal. Learned counsel supported the submissions advanced by the learned APP. He further submits that merely because the

Respondent No.2 has antecedents cannot be the ground for disbelieving the alleged incident of rape.

6. Perused the papers. The prosecutrix i.e. Respondent No.2 belongs to the Scheduled Caste. The appellant was working as a Gram Sevak, at the relevant time. A perusal of the FIR of the Respondent No.2 shows that the Respondent no.2 is a married lady, residing with her two daughters and one son, having separated from her husband for about two years.

7. Respondent No.2 has stated that she got acquainted with the Appellant about 15 days prior to the incident; that as the president of the Dalit Panthar Sangatana had asked her to collect information about the benefits of the Gharkul Yojna, she sought information from the appellant; that however, she was not given the said information and was made to sit in the office of the Appellant for some time. According to Respondent No.2 on 24.01.2023, when she went to the appellant's office, he asked her to come on 29.01.2023 at about 6.00 p.m. to the office of the Social Welfare Department, near D-Mart. She has further stated that pursuant thereto, she went near D-Mart and was waiting near the water tank at 6.30 p.m. on 29.01.2023, when the appellant came there and asked her to sit on his motorcycle, saying that he will introduce her to the officer of the Social Welfare Department. She

has stated that the appellant instead took her to a place near Bombay Park and disclosed that he likes her, and had forcible sexual intercourse with her. She has stated that soon thereafter, she narrated the said incident to her mother and immediately lodged the FIR on the very same day i.e. 29.01.2023 at about 11:56 p.m.

8. The perusal of the FIR shows that the contents of the said FIR are consistent with the Respondent No.2's statement under Section 164, recorded by the Magistrate. The FIR is also consistent with the history given by the Respondent No.2 to the Doctor, when she was medically examined on 31.01.2023.

9. The mobile tower location details collected also *prima facie*, shows the location of the appellant in the said area, when the alleged incident took place. As far as the antecedents of the Respondent No.2 are concerned, merely because the Respondent no.2 has antecedents cannot be the ground to *prima facie* disbelieve her testimony, more particularly, when the FIR was lodged immediately on the very same day. Considering the aforesaid, no ground is made out to interfere with the impugned order dated 27.02.2023 passed by the learned Sessions Judge, rejecting the appellants application for pre-arrest bail.

10. Appeal is dismissed.

11. Needless to state that if an application for regular bail is filed by the Applicant, the learned Sessions Judge to decide the said application on its own merits uninfluenced by the observations made in this order.

12. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.