

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.678 OF 2023

Vaibhav Maruti Kale .. Appellant
Versus
State of Maharashtra and Anr. .. Respondents
...

Mr. Prashant Hagare for the appellant.
Mr. S.R. Agarkar, APP for the State.
Mr. Aniket Nangare, for respondent no.2.

CORAM: BHARATI DANGRE, J.
DATED : 15th SEPTEMBER, 2023

P.C:-

1 The appellant is arrested on 3/02/2023 in C.R. No. 43 of 2023, registered with Daund Police Station, District Pune, upon the complaint lodged by respondent no.2, on being accused for committing an offence punishable under Section 498A, 376 (2)(n), 109, 504, 506, 34 of IPC and Section 3(1)(w)(ii), 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

 He seek his release on bail on the ground of his false implication and also on the ground that the version of the complainant do not inspire confidence and the material collected by the prosecuting agency is insufficient to sustain his conviction for the alleged offences.

2 Heard, Mr. Prashant Hagare for the appellant, Mr. Aniket Nangare, the Advocate for respondent no.2 and learned

APP Mr. Agarkar, representing the State.

The appeal call in question, the order passed by the Special Court rejecting his application under Section 439 of Cr.P.C. and he seek his liberty by securing his release on bail.

3 The complaint is filed by the wife of accused no.1, the brother of the appellant, when she allege that she came in contact with accused no.1 Abhijit and upon their friendship having converted into a love affair, Abhijit proposed her for marriage, when she disclosed that she belongs to Scheduled Caste category. When the marriage was solemnized, it was projected by Abhijit to his family members, that she belongs to Maratha caste, but as per the complainant, when her caste was revealed to the family, as some documents disclosed that she belong to Scheduled Caste. It is her allegation that she was humiliated by her mother-in-law as well as the present appellant, who is her brother-in-law. The complainant specifically allege that they used to torture her physically and mentally and since she had married against the wishes of her family, it was not open for her to return to her parental house.

Against the present appellant, the complainant specifically allege that despite period of one year having been passed since marriage since she did not conceive, her mother-in-law and the present appellant started passing taunts to her and gave her insulting treatment. Though she attempted to ascertain by medical examination of her husband about any defect, the family was opposed to they taking the necessary tests.

The complainant alleged that on one day, when she was in her bedroom, the appellant entered and told her that her husband suffered from some medical issue and she will never conceive from him, but if she establishes relationship with him, she can give an heir to the family and the blot on her of unable to bear a child, would be washed away.

She drove the appellant away from her room and narrated the incident to her husband, who advised her to establish relationship with the appellant, so that she can conceive. This perturbed her and she abused her husband. Thereafter, her husband and her mother-in-law brought the appellant to her bedroom and locked them in a room and when he attempted to establish proximity with her with an intention to establish physical relationship she protested at that time and as per the complainant he humiliated her as belonging to Scheduled Caste and by pointing out a knife at her and by threatening her that if she do not satiate his desire, she shall be eliminated, he committed rape upon her.

It is the version of the complainant that this act was repeated with the concurrence of her own husband and mother-in-law.

She continued to bear the sexual aggression, since she had married against the wishes of her family and she had no place, where she could have approach for redressal of injustice being done to her.

The complainant also alleged that the accused persons humiliated her in public view by insulting her in the

name of caste and after gathering courage, she reported the incident to the police station on 19/01/2023.

The occurrence of the event in the complaint are alleged to have occurred after her marriage in the year 2014, whereas the complaint is lodged with the police station in the year 2023.

4 Evidently, there is gross delay in lodging the FIR and though an explanation is offered by the complainant that it is only when she established contact with her parents and with their support she gathered the courage to report the incident, *prima facie*, the explanation offered do not appear to be satisfactory.

It is a case of the appellant that the complainant eloped with his brother and they got married in Alandi as she was apprehensive that her family may not support the marriage and her father had filed the missing complaint with Daund Police Station and therefore, on she being traced in the company of the accused no.1, the appellant and his entire family was called to the police station in presence of her own family members and both the families were aware that it was an inter-caste marriage.

It is the case of the complainant that she along with accused no.1 resided with his parents and on completing his education, they shifted to the house owned by their uncle in Defence Colony as accused no.1 was serving at Cipla and they used to visit the house of their mother on festival. According to the appellant, she was not on visiting terms with her family but in the year 2021, she indicated to accused no.1 that she wanted to visit her parents and expressed her desire to continue to stay

there for some time and when accused no.1 persuaded her to come back, he was abused by her mother that he had failed to take care of his wife.

5 The feud between the two families began when the mother of the complainant accuse the family of the appellant of ill treating her. Even, the complainant and the accused no.1 at insistence of her mother underwent the medical checkup and upon the test of his brother, no fault was found with his brother, whereas the uterus of the complainant was reported to be small in size and therefore, some medication was offered.

This perturbed the complainant and she left the company of accused no.1 and avoided to join his company. On 9/04/2022, she went missing from the house and when he was about to lodge the missing complaint, she was traced at her parental house. Attempts were made to resolve the discord between the accused no.1 and the complainant and it is in this background it is the case of the appellant that he has been wrongly implicated with false accusations, as it is unbelievable that from March, 2016 to February, 2022 she was sexually abused by the appellant, but she never complained to any authority and waited till lodging of the FIR in the year 2023.

6 On perusal of the material compiled in the charge-sheet, I cannot ignore the abnormal delay in the complainant approaching the concerned Police Station with serious accusations of sexual assault by her own brother-in-law. The accusations made belatedly, create a suspicion about it's truthfulness.

Except the bare word of the complainant that, there is no other material in the charge-sheet, and the statements which are compiled in the charge-sheet are only based upon her version, which will have to be tested at the time of trial.

Prima facie since the allegations made in the FIR have been made at a belated stage, and since the case of the appellant is from the year 2016, the complainant was residing separately in Defence Colony, the possibility of the accusations being untrue, cannot be ruled out. The accusations will have to be looked with suspicion on account of delay.

Since the investigation is now complete and the charge-sheet is filed, the detention of the appellant cannot continue and while I release him on bail, I deem it appropriate to impose certain stringent conditions so as to avoid any attempt on his part to pressurize or influence the complainant.

: ORDER :

- (a) Application is allowed.
- (b) Appellant - Vaibhav Maruti Kale shall be released on bail in connection with C.R.No. 43 of 2023 registered with Daund Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The appellant shall mark his attendance before the concerned police station on first Monday of every month between 3:00 p.m. to 5:00 p.m.
- (d) The appellant shall not enter jurisdiction of Taluka-Daund, District Pune, except for marking his attendance as directed.

(e) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The appellant shall not tamper with evidence.

(f) On being released on bail, the appellant shall give his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)