

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1024 OF 2023

Santosh Sudhir Vichare .. Appellant
Versus
The State of Maharashtra and anr .. Respondents

WITH
CRIMINAL APPEAL NO. 849 OF 2023

Sudhir Vinayak Vichare .. Appellant
Versus
The State of Maharashtra and anr .. Respondents

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Mr. Anil D. Joshi for the appellant in Appeal No.1024/2023.
Ms.Sandhya Mailagir for the appellant in Appeal No. 849/2023.
Mr.Mainak Adhikary with Mr.Pintu Singh for respondent no.2 in both the appeals.
Mr.Y.M. Nakhwa, APP for the State.
PSI A.M. Bhavar with S.S. Kunde from Kopri police station.
ACP Kadule from Wagle police station Thane.

CORAM: BHARATI DANGRE, J.
DATED : 18th OCTOBER, 2023

P.C:-

1 The two Appellants are aggrieved by rejection of their applications, securing their release on bail filed before the Addl. Special Judge, SCST Act, Thane.

2 The appellants are the husband and father of the complainant on whose narration the subject C.R came to be registered under section 498A, 406, 377, 504, 506 r/w Section 34 of IPC and it also invoked Sections 3(1)(r) and 3(1)(s) and Section 6 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

 It is to be noted that in Criminal Appeal No.849/2023, the appellant was directed not to be arrested by inviting attention of the Court to the decision of the Apex Court in case of *Hitesh Verma Vs. State of Uttarakhand*, (2020)10 SCC 710 and by recording prima facie substance in the submission of the counsel for the applicant. The protection continue to exist till date.

3 I have heard learned counsel for the appellants and learned counsel for respondent no.2.

 The complaint lodged on 19/6/2023 has implicated her husband and all his relatives i.e. father, mother, sister and uncle.

 The longish complaint narrate that on 28/2/2022, the complainant, who belong to Scheduled Caste got married to accused Santosh and the marriage was registered. She has also referred to the prior acquaintance between the two and has also stated that as a couple, they had maintained physical relationship before the marriage.

It is her allegation that Santosh had recorded their video clips in private act.

4 In the wake of the fact that she belong to Scheduled Caste, as per the complainant, Santosh convinced her that only when he is able to persuade his family members for the marriage, he would cohabit with her and she trusted him. Talks ensued between the two families about the marriage and at times, the meetings took place in a restaurant.

According to the complainant, in the month of April 2022, all the accused persons visited her house in presence of her mother, her younger sister and even she was present. In the open door of the house, the conversation ensued and her mother was told to disclose her surname as 'Kadam' instead of 'Kamble' but her mother did not agree. Thereafter, it is the version of the complainant that they were insulted by stating that they were never intending to get a daughter-in-law belonging to a lower caste but Santosh has already performed the marriage. A lady residing in the neighborhood overheard the said conversation and even when they came down the building, her mother was being forced to identify herself as 'Kadam' and this was also overhead by another lady in the Society.

5 Despite the aforesaid incident occurring in the month of April 2022, on 25/4/2022, the marriage of the complainant

was solemnized with Santosh in a Hall in Thane and all the necessary rituals were performed and even there was exchange of jewellery. The complaint thereafter refer to the harassment meted out to her at the instance of her in-laws and that is the reason why Section 498A has been invoked.

6 As far as the accusations of the atrocities are concerned, the complainant has narrated that her husband in private moments used to insult and humiliate her and force her to commit unnatural sex. She also allege that he used to insult her in the name of caste and often use to threaten her with dire consequences of eliminating her.

As far as this incident is concerned, it took place within four corners of the house and hence, one fail to understand how the provisions of Section 3(1)(r) and 3(1)(s) are attracted.

It is her further allegation that when he reported to the police station, he agreed that he shall stay with her in rented premises and at that time, Santosh again referred to her caste and humiliated her. Even in respect of this incident, there is no supporting material to show that it occurred within 'public view' as defined under Section 3(1)(r) and 3(1)(s) of the Atrocities Act.

7 The other accusation as regards Section 498A, 406, 377, 506 r/w Section 34 of the IPC definitely do not warrant any custodial interrogation as it is a case of a relationship gone sour

and I have no hesitancy in coming to a conclusion that the custodial interrogation is not warranted.

As far as accusation under the Atrocities Act are concerned, by reading of the FIR, since no offence is prima facie made out, as alleged, since the abuses which are referred to in the complaint, are not heard within public view, except references to the abuses in the month of April 2022, prima facie, it can be seen that after this entire episode, the marriage was performed and that speaks volumes.

8 In the wake of the above and in particular when the charge-sheet is filed against Sudhir Vichare and other accused persons, I see no reason to deny the protection from arrest to the applicant i.e. her husband also.

Hence, the following order :

ORDER

Appeals are allowed.

- (a) The appellant Santosh Vichare in Appeal No.1024/2023 and appellant Sudhir Vinayak Vichare in Appeal No. 849/2023 shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.
- (b) The appellants shall not directly or indirectly make any inducement, threat or promise to any

person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(c) The Appellants shall attend the trial on regular basis.

(d) On being released on bail, the appellants shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

As far as Santosh Vichare in Appeal No.1024/2023 is concerned, he shall report to the police station on every Thursday between 3.00 p.m to 5.00 p.m for a period of four weeks.

(SMT. BHARATI DANGRE, J.)