

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1166 OF 2022**

Sagar Hanumant Kadam

...Appellant

Versus

The State Of Maharashtra and Anr.

...Respondents

Ms. Anjali Patil Advocate for Appellant.

Mrs. S. D. Shinde, APP for Respondent No.1-State.

Mr. Rajesh S. Dharap, appointed Advocate for Respondent No.2.

Mr. Amit Dubalu, (P.C.) Kulgaon Police Station is present.

Digitally signed
by
DNYANESHWAR
ASHOK ETHAPE
Date:
2023.02.27
17:48:38 +0530

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 16th FEBRUARY, 2023.

P.C.:-

1. By the present Appeal under Section 14-A (2) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC/ST Act), the Appellant/Original Accused No.3 has impugned Order dated 15th October 2022 passed below Exhibit-1 in RBA No.1666/2022, by the learned Additional Sessions Judge, Kalyan, rejecting the said application for bail under Section 439 of Cr.P.C. in C.R. No.132 of 2022 registered with Kulgaon Police Station, Badlapur, District Thane (Rural) for offences punishable under Sections 376(2)(n), 315, 328, of the Indian Penal Code and Sections 3(1)(a)(w)(i),(ii), 3(2)(va) of SC/ST Act.

2. Heard Smt. Patil, learned Advocate for Appellant, Ms. Shinde, learned APP for the Respondent-State and Mr.Dharap, learned Advocate appointed to represent Respondent No.2. Perused charge-sheet.

3. The First Information Report (for short “FIR”) dated 20th August 2022 is lodged by Respondent No.2/victim. It is the prosecution case that, victim was working in Sidhhanath Jeans Wash Company at Village Rahtoli, Taluka Ambernath, District Thane. Appellant is the owner of said Company. Victim’s co-workers/co-accused namely, Samshad Ansari and Mukesh Bind were also working in the said Company. In the month of May 2022 in the afternoon at about 02:00 pm, Appellant told the victim to have her lunch. She accordingly went to the lunch room and found that, her purse and tiffin were partly opened. As she was hungry, she started having lunch. At that time, principal accused Samshad Ansari came in the said room and stared at her. While having her food, the victim realized that, her food was mixed with a stupefying substance and subsequently she got unconscious. After sometime, she gained consciousness and found that, her clothes were stained with blood and she was unable to get up. She noticed that, the door of lunch room was closed from outside. She knocked the door and started shouting for help. At that time, Samshad Ansari opened the door. Victim asked him about the said incident and the blood which was on her clothes. Samshad Ansari pressed her throat and told her that, he has taken videography of the alleged act committed by him. Samshad Ansari also

informed her that, along with him co-accused, Appellant and Mukesh have also participated in the said act. Victim subsequently cleaned her clothes and engaged herself in her work. In the Month of July 2022, the victim had been to Doctor, when Doctor informed her that, she is pregnant. She informed the said fact to Appellant, co-accused Mukesh and one Mr. Suvarna Pawar upon which the Appellant, co-accused Mukesh and Samshad Ansari told her that, if she informs the said fact to anybody, they will circulate the video on social media and she would be defamed. It is alleged that, on 12th July 2022, Appellant, co-accused Samshad Ansari and Mukesh took the victim to the Doctor. They got executed one chit from her exonerating Appellant and co-accused Mukesh in her own handwriting and the victim was forced to put her thumb impression thereof. As per the contents of FIR, after examining victim, the concerned Doctor refused to perform medical termination of pregnancy and drove away accused persons as the victim was pregnant. She informed the said fact to her close relative i.e. her brother and thereafter present crime is registered.

4. Mr.Dharap, learned Advocate appointed to represent Respondent No.2 vehemently opposed the Appeal and submitted that, Appellant is instrumental in forcefully executing the chit from the victim girl exonerating himself and co-accused Mukesh. That, on the day when the stupefying substance was laced in the food of victim, the Appellant had knowledge about the same and it is for this reason he was laughing at the

victim after she came out of the said room. He submitted that, the Appellant has played equal role as that of other co-accused and therefore the Appellant may not be released on bail.

5. Learned APP while opposing the Appeal drew our attention to various statements and the material available against the Appellant. She also prayed that, the Appellant may not be released on bail and the present Appeal may be dismissed.

6. We have perused the statement of prosecutrix recorded under Section 164 of Cr.P.C. by the learned Judicial Magistrate, First Class, 2nd Court, Ulhasnagar. In her statement, the prosecutrix has attributed the role and/or act as contemplated under Section 376 of Indian Penal Code to principal accused Samshad Ansari. As far as the Appellant is concerned, he has been attributed with the role of screening the evidence for offence under Section 315 of IPC and threatening the victim and/or to coerce her in executing the chit dated 12th July 2022, exonerating himself and co-accused Mukesh. *Prima facie* it appears that, there are no allegations against the Appellant as contemplated under Section 376 of IPC. The Appellant is behind the bars since 20th August 2022. Learned Advocate for Appellant on instructions submitted that, there are no antecedents at the discredit of Appellant.

7. Mr.Dharap on instructions submitted that, if the Appellant is released on bail, there is every possibility that, the Appellant may threaten the

victim, who hails from the lower economic and social strata of the society and will tamper with the evidence. The said apprehension can be taken care of by imposing stringent conditions.

8. In view thereof, we are of the opinion that, the Appellant can be released on bail.

Hence, the following order:

- (i) Appellant be released on bail in connection with in C.R. No.132 of 2022 registered with Kulgaon Police Station, Badlapur, District Thane (Rural), on his furnishing PR bond of Rs. 25,000/- with one or two solvent local sureties in the like amount;
- (ii) After his release from Jail, Appellant shall not enter the jurisdiction of Ambernath Taluka, except for marking his presence with Kulgaon Police Station, Badlapur as specified hereinbelow.
- (iii) After his release from Jail, Appellant shall attend Kulgaon Police Station, Badlapur, Taluka Ambernath, District Thane (Rural) on every alternate Monday between 10:00 am to 12:00 noon till framing of charge by the trial Court.
- (iv) After charge is framed by the trial Court, Appellant is directed to attend Kulgaon Police Station, Badlapur, Taluka

Ambernath, Dist. Thane (Rural) on every first Monday of the month between 10:00 am to 12:00 noon.

- (v) Appellant is directed not to contact the victim threaten or pressurise her and not to threaten the prosecution witness.

9. In view of the above, Order dated 15th October 2022 passed below Exhibit –1 in RBA No.1666/2022 by the trial Court is set aside *qua* the Appellant only.

10. Appeal is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)