

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.13 OF 2023

[Shanid @ Shahid S/o Nasirkhan Pathan ..V/s.. The State of Maharashtra
and Anr.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr C. R. Thakur, Advocate for the Appellant.
Mr M. J. Khan, Addl. P. P. for the Respondent No.1/State.
Ms P. R. Arbat, Advocate (Appointed) for the Respondent No.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 15th FEBRUARY, 2023.

. Heard.

2. This is an appeal under Section 14(A)(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SCST Act" for short), raising a challenge to the order of rejection of bail in Criminal Bail Application No.214 of 2022 *vide* order dated 17.10.2022.

3. The Appellant Shanid @ Shahid Nasirkhan Pathan was came to be arrested in Crime No.30 of 2022, registered with Bhamragad Police Station, District Gadchiroli, for the offences punishable under Sections 294, 323, 354B, 363, 366A, 376(2) (i), 376(da) and 506 of the Indian Penal Code, 1860, Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(1)(w)(i)(ii), 3(2)(va) and 3(1)(r) of the SCST Act. The Appellant/accused has applied for regular bail to the Special Court, however, it was rejected *vide* order dated 17.10.2022 which is impugned herein.

4. At the instance of report lodged by a girl aged 15 years, the crime was registered. It is her contention that on 16.07.2022 in

the evening around 8:00 p.m. while she was proceeding alone from the side of Persapen School on main road, two motorcyclist accosted her. One of them, who was wearing a red colour shirt, enquired as to where she is going and then compelled her to sit on his motorcycle. The another person, who was wearing blue shirt, left that place and the person in red colour shirt took victim on his motorcycle to the isolated place near ITI College. At said place, the person in red colour shirt abused, striped her and about to make sexual advances, however, the victim resisted somehow, got rescued and ran away. Immediately, with the assistance of nearby person, victim went to concerned Police Station and lodged a report.

5. It is the Appellant's case that he has been falsely implicated in the crime. According to Appellant the entire material collected during the course of investigation does not make out a case against him. We have examined all three statements of victim. In first statement dated 17.07.2022, the victim has stated the role of Applicant (blue colour shirt) to the extent that when his companion forcibly took her by motorcycle, he was present and then left the place. The Police have recorded supplementary statement of victim on 21.07.2022. In said statement, the victim girl has similarly stated the thing, but added the allegation of rape against first person wearing red colour shirt. It was followed by recording third statement of victim on 23.07.2022 in which she has assigned some role to the Applicant. This time victim stated that at relevant time Appellant has helped his fellow colleague by compelling victim to made to sit her on motorcycle

and again went to the secluded place and assisted main accused in committing rape.

6. The learned Additional Public Prosecutor for Respondent No.1/State as well as appointed learned Counsel for victim placed stress on the third statement to contend that it discloses the Appellant's role in no uncertain terms. The third statement specifically says that the Appellant has compelled the victim girl to sit on motorcycle, followed both of them and again assisted main accused in committing rape. Having regard to those specific allegations, bail is prayed to be rejected.

7. Besides above three statements, there is no other material against the Appellant. Undeniably the allegations of rape are against co-accused Arbaj Khan. In first statement, victim has not assigned any active role to the Appellant but only stated that he had accompanied main accused when she was accosted. In second statement, she similarly assigned the role to the Appellant but added a further allegation of rape that too against main accused. In third statement, she again added about the role of Appellant as stated above. The alleged incident took place on 16.07.2022 on which the report was lodged in proximity. After four days, her supplementary statement was recorded, wherein she has assigned no role to the Appellant besides mere presence. It has come first time after six days about the role of Appellant which is a matter to be appreciation in trial. However, the thing remains that in first two statements, there are no allegations against Appellant.

8. The Appellant was came to be arrested on 04.08.2022 and after facing custodial interrogation, he is in jail. The Police have already completed investigation resulting into filing of final report. Considering the nature of accusation and material collected during investigation, it is not a case where the liberty of Appellant can be curtailed. The aspect of anticipated interference or tampering can be taken care of by imposing certain conditions.

9. In view of above, we find that the Appellant has made out a case for grant of regular bail. Hence, the following order :

ORDER

- i) Criminal appeal stands **allowed**.
- ii) Impugned order dated 17.10.2022 passed in Criminal Bail Application No.214 of 2022 is hereby quashed and set aside.
- iii) The Appellant Shanid @ Shahid Nasirkhan Pathan is released on bail on his furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties of like amount.
- iv) The Appellant shall not enter into the village Laheri where the informant is staying, till conclusion of trial.
- v) The Appellant shall not tamper with the prosecution evidence.
- vi) The criminal appeal is disposed in above terms.
- vii) Fees of appointed counsel be given as per rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)