

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

CRIMINAL APPEAL NO. 138/2023

1. Karbhari Muktaram Kayande,
Aged about 52 yrs., Occ. Agriculturist,
2. Anil S/o. Karbhari Kayande,
Aged about 30 yrs., Occ. Agriculturist,
3. Yogesh S/o. Karbhari Kayande,
Aged about 27 yrs., Occ. Agriculturist,

All R/o. Baygaon Khurd, Tah. Deulgaon
Raja, Dist. Buldana.

APPELLANTS

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Andhera,
Tq. Deulgaon Raja, Dist. Buldana.
2. X Y Z (Victim in Crime No. 03/2023
registered with P.S.O. Andhera,
Tq. D. Raja, Dist. Buldana.)

RESPONDENTS

Mr. R. N. Ghuge, Advocate for appellants.
Mr. V. A. Thakare, APP for respondent No.1.
Mr. Mahesh Rai, Advocate for respondent No.2.

CORAM

: VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.

DATE OF JUDGMENT **: 27.03.2023**

JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC and ST Act') seeking to quash the order of rejection of pre-arrest bail dated 21.02.2023 passed in Anticipatory Bail Application No. 21/2023 by the learned Additional Sessions Judge, Buldana.

3. Crime has been registered vide C.R. No. 3/2023 with the Police Station Andhera, Tq. Deulgaon Raja, Dist. Buldana for the offence punishable under Sections 376-D, 354-A, 450, 294, 506 of the Indian Penal Code, and Sections 3(1)(w)(ii), 3(2), 3(2)(va), 3(1)(r), 3(1)(s) of the SC and ST Act, alleging that the appellants have raped victim (married lady) aged 23 years. Appellant No. 1 is the father of the rest appellants. It is alleged that initially appellant No. 1 (father) has committed forcible sexual intercourse with victim whilst on second occasion remaining appellants (sons of appellant No.1) have committed gang rape on the victim who belongs to the member of Scheduled Castes and Scheduled Tribes.

4. The appellants have claimed pre-arrest bail on the ground that it is a case of false implication on account of land dispute. The learned counsel appearing for appellants took us through the background of litigation, contents of First Information Report ('FIR')

and urged that the appellants deserve for protection of the Court. On the other hand, the learned APP and Mr. Rai, learned counsel appearing for respondent No. 2/informant resisted the appeal by contending that the victim has made serious allegations against all appellants. She has detailed as to how she was subjected to sexual assault. Having regard to the seriousness of offence, appeal is prayed to be rejected.

5. The facts of the case in brief are that on 06.01.2023, victim -lady aged 23 years, lodged report. It is her case that her husband owns ancestral agricultural land where they were residing. Her father-in-law (Shivaji) was liquor addict as well as indulging into gambling. Appellant No.1 Karbhai took disadvantage of Shivaji's bad vices and under influence, got executed sale-deed of ancestral land from Shivaji in his favour. The informant's husband (Shrikrishna) and other family members have already filed a civil suit in that regard. The appellant No.1 Karbhari was doing money landing business. It is informant's case that approximately three months preceding to the lodging of FIR, around 03.00 p.m. in the afternoon, appellant Karbhari came to her house enquiring about her husband. While victim lady was offering a glass of water, appellant Karbhari caught hold her hand and pulled her closer. He demanded sexual favours, to which the victim denied. Despite her resistance, by force he caused her to lay down and committed forcible sexual intercourse. Appellant No.1 Karbhari also threatened her not to disclose the things otherwise he would kill her

children. She stated that thereafter also on several occasions, appellant Karbhari used to commit forcible sexual intercourse by giving threat of defamation. However, the victim did not disclose the things out of fear. It is victim's case that Grampanchayat election was held in the village on 18.12.2022. The victim has contested the election for the post of member of the Grampanchayat. Appellant Karbhari also threatened her to withdraw her nomination, but she did not.

6. It is victim's case that on 19.12.2022 around 10.30 p.m. she was slept in her house along with her sister. At the relevant time, her husband and brother-in-law had gone to the field for watering crops. Around 11.00 p.m. while she was in sleep, appellant No. 2 Anil and appellant No. 3 Yogesh (brothers inter se) entered into her house. She asked as to why they came at midnight, on which Yogesh on the point of knife, threatened to kill her son. Thereafter, both of them, turn by turn, forcibly committed sexual intercourse with her. Victim's sister Nita got awakened and started to raise alarm, however appellant Yogesh threatened her to keep quiet. Both of them abused in the name of caste and went away. The victim got frightened. She has disclosed the incident to her family members on 29.12.2022. Thereafter, all of them decided to lodge report and thus, on 06.01.2023, they approached to the concerned Police Station and lodged report.

7. The learned counsel appearing for the appellants would submit that the entire story narrated by victim about rape by the father and two sons is totally false and fabricated. They have been implicated in false case on account of land dispute. To support said contention, appellants have produced a copy of sale-deed dated 12.01.2022 showing that victim's father-in-law Shivaji had sold the subject land in the name of wife of appellant No.1 and mother of appellant Nos. 2 and 3. There was internal land dispute in between two wives of owner Shivaji. The sale was not approveable to victim's husband (son of Shivaji) and therefore, in order to pressurize and get back the land, false report has been lodged.

8. The learned counsel for the appellants would submit that owner Shivaji (father-in-law of victim) was having two wives namely Rekha and Gangu. Rekha has two sons namely Parmeshwar and Shrikrishna (husband of victim) which is not disputed by the victim. Copy of sale-deed discloses that on 12.01.2022, Shivaji and his second wife Gangu sold subject land to appellants by registered sale-deed, which is not in dispute. It is appellants' contention that due to internal family dispute, another wife of Shivaji namely Rekha and her two children did not like the sale and therefore, they had a serious grudge against the purchaser of the land i.e. appellants.

9. In order to support the case of false implication, the appellants have produced a copy of N.C. Report dated 23.01.2022 lodged by wife of appellant No.1 namely Chandrabhaga. In the said report, it is alleged that Shrikrishna (husband of victim) threatened that if their ancestral land is taken away, he would commit suicide, and gave threats. More particularly, a copy of complaint dated 22.06.2022 filed by Chandrabhaga (purchaser and wife of appellant) to Tahsildar has been produced. She has contended about purchase of subject land on 12.01.2022 from Shivaji and his second wife Gangu. She stated that when they started to plough the land, the first wife of Shivaji namely Rekha and her two sons Parmeshwar and Shrikrishna obstructed to their possession. Particularly, she stated that they have threatened that if she enters into the land, then they would file a case under SC and ST Act and other provisions. On that basis, it is argued that already Shrikrishna was annoyed by purchase of their ancestral land by the appellants, therefore had threatened to file false case under SC and ST Act.

10. On this background, it is canvassed that in order to pressurize the appellants for return of land, at the behest of Shrikrishna and other family members, false report of rape has been lodged. The appellants have also produced copies of two affidavits sworn by Shivaji and Gangu stating that no such incident occurred, but the allegations made by the victim who is their daughter-in-law are false one. It is also

submitted that allegation of rape by father and two sons on the same lady are inherently improbable. It is submitted that appellant Karbhari is heart patient. He has undergone angioplasty on 30.04.2022 and was hospitalized upto 02.05.2022. Thereafter, he took treatment at Aurangabad on 30.08.2022 and 13.12.2022. Therefore, it is improbable that he has continuously committed forcible sexual intercourse on the victim. It is submitted that since there is no prima facie case, statutory bar under Section 18 of the SC and ST Act would not apply.

11. Per-contra, learned counsel appearing for victim would submit that the appellants are waity person of the village. Though it was ancestral land it was not exclusively owned by Shivaji, however by playing fraud, the appellants got executed sale-deed from Shivaji and his second wife Gangu. Already first wife of Shivaji (Rekha) along with her two sons and two daughters-in-law (including victim) have filed a civil suit for partition. The appellants got annoyed by such dispute and therefore, forcibly raped victim. It is argued that the victim has specifically stated the act of sexual violence which cannot be doubted at this stage. The victim's sister namely Nita has witnessed the occurrence. Though FIR was lodged after few days, however the victim and her family were under tremendous pressure. Considering the seriousness, it is submitted to reject the bail.

12. So far as the sale of land is concerned, there is no dispute. Victim's father-in-law Shivaji and his second wife Gangu had sold

subject land to the appellants' wife. Shivaji's first wife Rekha and her two sons Parmeshwar and Shrikrishna along with their wives (including victim) have objected the sale by filing civil suit. Obviously, they were aggrieved against the appellants as they had purchased the said property from victim's father-in-law Shivaji. In aforesaid background the allegations are to be examined on prima facie basis. The victim stated that she was residing along with other family members in the subject land. Prior to three months the appellant Karbhari in the afternoon, entered into her house and committed forcible sexual intercourse. Appellant Karbhari repeated the things on various occasion, but out of fear, she remained silent. The learned counsel for the appellants would submit that Shivaji and Gangu were residing together with the victim, but they have filed affidavit stating that no such incident occurred. True, at this stage, no much waitage could be given to those affidavits. Pertinent to note that victim lady though alleges that the first incident of rape occurred prior to three months and it was repeated, however she never disclosed the things to anybody. She has not stated the date as to when the initial incident occurred. She has vaguely stated that thereafter also the things were repeated at the hands of appellant Karbhari without specification. On the background of inimical terms on account of land dispute, prima facie, it is impossible to hold that for three months, she kept silence despite repeated rape.

13. As regards to the second incident dated 19.12.2022 is concerned, it is alleged that both brothers have simultaneously raped victim on the point of knife despite raising alarm. It is a matter of consideration as to how the neighbouring persons did not get wind of alarm and nobody heard shouts. The said incident allegedly occurred at late hours i.e. 11.00 p.m. at midnight. Therefore, prima facie, it is difficult to accept that all male members had gone to the field for watering crops. It has come on record that on 18.12.2022, the victim lady fought election for the member of Grampanchayat and declared defeated on 19.12.2022. It assumes significance that, the victim lady fought Grampanchayat election. It is not a case that the victim was mere village house wife, but she appears to be active in village politics. Therefore, it is hard to believe that despite repeated rape, she did not disclose the things to her family members out of fear. Moreover, though as per victim's case, she has disclosed the things to her family members on 29.12.2022, however again for next one week no report has been lodged. Pertinent to note that already a civil dispute was going in between the parties. In such background, they would have been immediately reported the matter to the Police, but they did not. Therefore, it requires serious consideration about the worth of victim's contention.

14. Apparently, there was a family dispute at the instance of land disput. Victim's father-in-law Shivaji and his second wife Gangu

had already sold subject land to the appellants' wife. Shivaji's first wife Rekha and her two sons Parmeshwar and Shrikrishna along with their wives (including victim) have objected the sale by filing civil suit against the appellants. In such background, possibility of false implication cannot be ruled out. Moreover, there is considerable delay in lodging FIR. The victim appears to be a lady of good understanding as she actively participated in village politics, still she has not lodged report about serious occurrence. It also creates doubt that in night hours two brothers committed rape and despite raising alarm, nobody came to their rescue. The allegation against appellant No.1 Karbhari appears to be vague without specification. There is no justification about non-disclosure of earlier occurrence for a long period of three months that too on the allegation of repetition in between the interregnum period.

15. The learned counsel for the appellants relied on the decision of the Supreme Court in case of ***Prathvi Raj Chauhan Vs. Union of India and others, (2020) 4 SCC 727*** to contend that in absence of prima facie case, statutory bar under Section 18 of the SC and ST Act would not apply. In the said case, it is observed that when no prima facie material exist warranting arrest in a complaint, the Court has inherent power to direct a pre-arrest bail. The powers are to be used sparingly, where no prima facie offence is made out and if such order are not made, the result would inevitably be a miscarriage of justice or abuse of process of law. Moreover, reliance is placed on the

decision in case of ***Hitesh Verma Vs. State of Uttarakhand and another, (2020) SCC 710*** to contend that unless atrocities is only on account of victim belonging to the member of Scheduled Caste and Scheduled Tribe, the provisions of the special Act would not attract.

16. Above discussion leads us to hold that no prima facie case attracting the provisions under the SC and ST Act were made out. There are several inherent improbabilities in the case made out by the victim. The possibility of false implication to pressurize the appellants to get back the land prominently surfaces. One of the object of grant of pre-arrest bail is to protect personal liberty and to avoid humiliation of arrest in false case. In view of above peculiar facts, we see no reason for custodial interrogation. Already investigation is at the verge of completion. In the circumstances, we deem it appropriate to grant pre-arrest protection to prevent miscarriage of justice and to protect the life and personal liberty. The purpose of investigation would be served by imposing certain conditions while granting protection.

17. In view of that, the appeal deserves to be allowed, hence following order:-

(I) In the event of arrest of appellants namely Karbhari Muktaram Kayande, Anil S/o. Karbhari Kayande and Yogesh S/o. Karbhari Kayande, they shall be released on anticipatory bail on their furnishing P.R. Bond of Rs. 25,000/- each with one or two sureties in the like amount.

(II) The appellants shall attend concerned Police Station on every Sunday and Wednesday in between 10.00 a.m. to 01.00 p.m. till filing of charge-sheet or for the period of 90 days whichever is earlier.

(III) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(IV) The appellants shall provide their residential address and cell number to concerned Investigating Officer and shall not change their place of residence without prior intimation to the concerned Investigating Officer.

(V) The above observations are restricted to the decision of this application, which has no impact on the merits of the case.

18. Appeal stands disposed of in above terms.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane