

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
CRIMINAL APPEAL NO. 222/2023

Sunil Shankar Pise (In jail),
aged about 37 years, Occ. Labourer,
r/o Netaji Ward, Neri, Chimur,
District Chandrapur.

.....APPELLANT

...V E R S U S...

1. State of Maharashtra through
Police Station Officer, Police Station,
Chimur, District Bhandara.

2. Bharti Rama Dadmal,
aged about 28 years, Occ. Household,
r/o Gandhi Ward, Neri, Chimur,
District Chandrapur.

...RESPONDENTS

Mr. R. R. Vyas, Advocate for appellant.
Mr. I. Damle, A.P.P. for respondent no.1.
Mr. O. Deshpande, Advocate appointed for respondent no.2.

CORAM:- ANIL L. PANSARE, J.
DATED :- 26.04.2023

ORAL JUDGMENT

The appellant has filed the present appeal, being aggrieved by order dated 23.03.2023, passed by learned Additional Sessions Judge, Warora in Crime No.91/2023, registered with Police Station, Chimur for the offences punishable under Sections 354-A, 294, 506 of the Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, thereby rejecting application filed under Section 439 of the Criminal Procedure Code, 1973.

2. The appellant has been arrested in the aforesaid crime on 08.03.2023. The case of the prosecution is that respondent no.2 – informant, has lodged report on 08.03.2023 stating therein that she resides with her husband, daughter and son. On 08.03.2023, at about 10:30 a.m., the informant served food to her husband. At that time, someone called her. She came out of the house and asked as to why is he calling her. At that time, the appellant sought sexual favour from her by saying that he will pay money to her. Upon that, she scolded him. In response, he asked her to accompany him by abusing her by character. He then left on motorcycle. The informant narrated the incident to her husband. Her husband said, the said person is Sunil Shankar Pise, the present appellant. Thereafter, the informant and her husband went on motorcycle to reprimand him. However, the appellant was not at home. While returning, the informant and her husband noticed the appellant standing near market square. They questioned the appellant as to why did he abuse the informant and sought sexual favour, to which the appellant has abused and threatened them. The appellant even brought wooden stick but was prevented from assaulting by the informant and the person who was passing by the road. The informant states that since the

appellant and her husband were classmates, he (the appellant) is aware that the informant belongs to Mana – Scheduled Tribe. This is how the report has been lodged.

3. Learned A.P.P. and learned counsel assisting the prosecution have opposed the appeal on the ground that the appellant was knowing that the informant belongs to Mana – Scheduled Tribe. Despite that, he abused her. However, learned counsel for appellant has correctly pointed out that it is not the case of the prosecution that the appellant has abused the informant or her husband on the ground that they belong to Mana – Scheduled Tribe. Learned counsel for appellant further submits that knowledge of caste attributed to the appellant does not carry any substance inasmuch as merely because the appellant was classmate of husband of informant will not by itself lead to an inference that the appellant was aware of the fact that the informant belongs to Mana – Scheduled Tribe.

4. On this point, the prosecution will get an opportunity to put forth its version, which will be tested by defence through cross-examination. However, considering the nature of allegations and evidence collected against the appellant and considering the fact

that nothing has to be recovered from or at his instance, further incarceration of the appellant appears to be uncalled for.

5. The learned Sessions Court has not considered the aforesaid aspect and has rejected the application on the ground that the informant and her husband have named the appellant for the crime and that if he is released on bail, the appellant may threaten or pressurize the informant or her husband and that the investigation is in progress.

6. These apprehensions could well be dealt with by putting the appellant to appropriate terms. The order impugned, therefore, requires correction. Hence, following order is passed.

ORDER

- (i) The appeal is allowed.
- (ii) Impugned order dated 23.03.2023, passed by learned Additional Sessions Judge, Warora in Crime No. 91/2023, thereby rejecting application of the appellant under Section 439 of the Criminal Procedure Code, 1973 for grant of bail, is set aside.
- (iii) Appellant – Sunil Shankar Pise, be released on bail in Crime No.91/2023, registered with Police Station, Chimur for the offences punishable Sections 354-A, 294, 506 of the Indian Penal

Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on he executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(iv) The appellant shall attend Police Station, Chimur, as and when called by the investigating officer and shall cooperate in the investigation.

(v) The appellant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(vi) The appellant shall not contact informant or her husband, in any manner. The appellant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vii) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(viii) The appellant shall maintain law and order.

(ix) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The appeal is disposed of.

Professional charges of Mr. Omkar Deshpande, learned appointed counsel for the respondent no.2 shall be paid as per the rules.

(ANIL L. PANSARE, J.)

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