

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

CRIMINAL APPEAL NO. 671 OF 2022

1. Pravin @ Pranay s/o Jaiwantrao Bhute
Age : 29 years, Occupation: Agriculturist

2. Sandeep @ Santosh s/o Dyaneshwar
Amzare, Aged about 31 years,
Occupation : Labour

Both Resident of Village Deurwada,
Tq. Chandur Bazaar, Dist. Amravati.

....Appellants

Versus

1. State of Maharashtra, Through P.S.O.,
P.S. Shirajgaon Kasba, Tq. Chandur
Bazaar, Dist. Amravati.

2. X.Y.Z, Through P.S.O.,
P.S. Shirajgaon Kasba,
Tq. Chandur Bazaar, Dist. Amravati.
(In Crime No.238 of 2022)

....Respondents

Mr. P.R. Agrawal, Advocate for appellant No.1.

Ms. S.S. Jadhav, Advocate for appellant No.2.

Mr. M.J. Khan, APP for respondent No.1.

Ms. Archana R. Murrey, Advocate for respondent No.2 (appointed)

**CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.**

DATE : 09.01.2023.

ORAL JUDGMENT: (PER: Vinay Joshi,J)

By consent of both sides, the appeal is taken up for
hearing at the stage of admission.

(2) Admit.

(3) The challenged raised in this appeal is to the order dated 05.09.2022 passed below Exh.1 in Sessions Trial No.140/2022 by which the trial Court has declined to release both the appellants on regular bail.

(4) At the instance of report lodged by a victim lady aged 21 years, crime was registered on 22.06.2022 vide Crime No.238/2022, with Police Station Shirajgaon Kasba, Tq. Chandur Bazar, Dist. Amravati, for the offence punishable under Sections 376(d), 506 of the Indian Penal Code and Sections 3(2)(v), 3(2)(va), 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(5) It is the victim's contention that she was working as an agricultural labour and at relevant time was staying in the agricultural land of one Prakash Sambhe. On 21.06.2022 she did the agricultural work for whole day and at night was slept in the hut along with old aged lady, namely, Jilebibai. Around 11 p.m. accused No. 1 Pranay who was nearby agriculturist arrived in the hut and had a

talked with Jilebibai. After one hour accused No. 1 again came to the hut had some conversation with Jilebibai, who in turn, left the place leaving victim alone.

(6) It is victim's case that within short while accused No.1 re-entered into the hut broke mosquito net and with the assistance of his associate (accused No.2) both had forcibly removed her cloths and had sexual intercourse. While leaving place accused No.1 uttered first name of his fellow colleague, on which victim made to understand that the another person was accused No.2 Santosh. Immediately, she went to the hut of witness Shantabai and narrated the things. Thereafter, they have telephonically informed the happenings to witness Prakash Sambhe and Pankaj Bhute, who came at her rescue. On the following day all of them went to the concerned Police Station and lodged the report.

(7) The learned counsel appearing for appellant would submit that this is purely a case of false implication or in the alternative at the most case of exaggeration. It is submitted that besides the isolated version of victim there is no other corroborative material. Particularly, we are taken through the statement of three

witnesses, namely, Pankaj, Prakash and Shantabai to contend that the initial disclosure by victim was only about physical assault and nothing else. Moreover, though the statement of Shantabai contends the narration as a full, however, our attention is attracted to the fact that Shantabai's statement was recorded after few days from the occurrence. Besides that we have been taken through the entire medical examination report to contend that the same totally contradicts the version of victim.

(8) At the end it has been submitted that the accused are in jail from 22.06.2022. The investigation is completed and charge-sheet has been filed. More emphasis is led on the point that the victim girl is from Madhya Pradesh State where she is presently residing meaning thereby there are no chances of tampering.

(9) As against this, learned APP as well as learned appointed counsel for the victim has resisted to grant bail. It is submitted that it is a case of gang rape, and thus having regard to the gravity of offence accused does not deserve for bail. We have been reminded by a well known principle that a conviction can be based on the basis of sole evidence of the victim. It is stated that in order to

establish sexual assault, medical evidence is not a must. Besides that it is submitted that the statement of victim is corroborated to the extent that the victim has narrated the history pertaining to sexual assault to Medical Officer.

(10) With the assistance of both sides we have gone through the entire material. It is the victim's contention that on the intervening night of 21.06.2022 to 22.06.2022 around 12.00 midnight while she was alone, the accused No.1 Pranay barged into the hut along with accused No.2 and both had forcible sexual assault on her. The victim stated that soon after the occurrence she informed the things to three witnesses as we have stated above. Particularly, we have gone through the statement of witness Pankaj and Prakash who arrived at the rescue of victim. They stated that in the late midnight victim telephonically called and clearly stated that the accused had embressed, caught her neck and nothing more. Though, witness Shantabai stated all the things however, as stated above, her statement is recorded on 14.07.2022 i.e. after 20 days from the occurrence.

(11) There may be possibility that victim initially might not have disclosed the entire incident on telephone, but contextually,

we have gone through the medical examination report. It assumes significance since on the following day of the occurrence itself victim aged 21 years was medically examined. Though, Medical Officer has recorded the history about sexual assault as narrated by victim however, while recording physical condition in column 15(B) there has been reference about pulling of hairs, dragging, throttling, violent shaking etc. In that context we have seen whether there are any marks of violence on the person of victim. On perusal of entire medical report, we find that there are no marks of use of force or violence as there were no injuries on the person of victim except hymen was torned. It is pertinent to note that the Medical Officer has neither expressed provisional nor final opinion about the sexual assault which also has to be taken into account.

(12) Insofar as the involvement of accused No.2 is concerned, it has been submitted that the identity of accused No.2 has not been established. No doubt the incident as emergence from victim's report, took place in dark hours. Concededly, there was no electricity as victim herself stated that in the mobile torch she was slept alone. As per victim's statement from conversation she learnt that one Santosh was the associate of accused No.1. In this regard

our attention has been invited to the Aadhar card of the accused No.2 which says that his name is Sandip and not Santosh. Furthermore, we have been taken through the T.I.Parade pertaining to both accused where the time discrepancy has been shown.

(13) Though conviction can be based on the sole testimony of victim, however, her evidence shall satisfy the judicial mind about it's reliability. *Prima facie* it reveals that initial disclosure by victim was only about assault and the same finds support from medical report. Moreover, Medical Officer has not expressed opinion about sexual assault. By the time investigation is complete and charge-sheet has been filed. Undeniably victim is presently residing in Madhya Pradesh State where notice of the appeal was served. The trial will take it's own time for disposal.

(14) Having regard to all above facts, we find that it is a fit case to use judicial discretion in releasing appellants on bail. In view of that following order is passed :-

ORDER

1. Appeal stands allowed.
2. Impugned order dated 05.09.2022 passed in Sessions Trial No. 140 of 2022 is hereby quashed and set aside.

3. Appellants/accused, namely, (1) Pravin @ Pranay S/o. Jaiwantrao Bhute and (2) Sandeep @ Santosh S/o. Dnyaneshwar Amzare are released on bail on their furnishing PR bond of Rs.25000/- (Rupees Twenty Five Thousand only) with one or two surety in the like amount each.
4. The appellants shall not tamper the prosecution evidence in any manner.
5. The appellants shall attend the concerned Police Station on fourth Sunday of each month in between 10.00a.m. to 12.00 noon till conclusion of trial.
6. Appellants shall provide their residential address and cell number to Investigating Officer.
7. Fees of the appointed counsel be paid as per rules.
8. The above observations are only made for the purpose of deciding bail which will have no impact on the merits of the case.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Prity