



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 86 OF 2024

Lakhan @ Vinod Kumar Kakade

... Appellant

VERSUS

The State Of Maharashtra
And Another

... Respondents

.....
Mr. Rahul R. Karpe, Advocate for Appellant
Mr. N.B. Patil, APP for Respondent No.1-State
Ms. Sunita G.Sonawane, Advocate for Respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th MARCH, 2024

ORDER :

1. This appeal filed under section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Atrocities Act, challenges the order dated 08.11.2023 passed by learned Additional Sessions Judge, Shrigonda, below exhibit 263 in Special Case No.150/2019, thereby rejecting bail to the applicant.

2. Without going into the unnecessary details, facts which would be relevant for decision of this appeal are that appellant is facing charge under sections 376, 354-A, 307, 323, 504,506 read with section 34 of the Indian Penal Code and under sections 4(i)1(s), 3(1)(r)(s)(w), 3(1)(i)(ii), 3(1)(z)

(a) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Atrocities Act. FIR in question is lodged by respondent no.2/victim. In the said crime, charge sheet is filed and the case is numbered as Special Case No.150/2019. Initially, appellant's bail application was rejected up to the Apex Court. Thereafter, appellant was granted bail by this Court on 20.09.2021. Thereafter, trial commenced and evidence of prosecution was recorded on 19.08.2023.

3. State filed application for cancellation of bail in this Court on the ground that appellant has violated the condition imposed on him while releasing him on bail. The condition was, "*(b) The appellant shall reside away from village Sangvi Dumala, Tq. Shirgonda beyond a radius of 100 kms till the completion of the recording of the testimony of material witnesses and when he would be permitted to attend the Court proceeding*". Additional ground was also raised that one more offence was registered against appellant at the instance of informant/victim. This Court by order dated 19.08.2023 cancelled bail granted to the appellant. Pursuant to the cancellation of bail, appellant has surrendered on 02.09.2023. and since then he is in jail. Appellant thereafter filed

application exhibit-263 before the trial Court for bail, which is rejected. Hence the appeal.

4. Heard learned advocate for appellant, learned APP for respondent No.1-State and learned advocate for respondent-2-victim. Perused the record.

5. Learned advocate for respondent no.2/victim and learned APP vehemently opposed the prayer for appellant stating that appellant has violated the condition imposed on him.

6. It appears from the record that appellant was found at a distance 78 kms from village Sangavi Dhumala and on that ground his bail was cancelled, as condition was imposed on him that he should not enter 100 kms radius of village Sangavi Dhumala. It is a matter of record that while granting bail, this Court by order dated 20.09.2021, the trial Court was requested to decide the Special Case No.150/2019, as expeditiously as possible and preferably on or before 30.04.2022. Thereafter by order dated 06.06.2022, extension of eight months was granted to decide the said case. Thereafter, by order dated 19.01.2023, six months extension is granted to decide the trial.

7. During trial prosecution has examined 9 witness till 27.10.2023 and the case was fixed for further evidence of rest of the witness. The trial court has observed in the impugned order that, "*there appears delay on the part of prosecution in examining the witness Nodal Officer for want of witness summons, again application for again issuing summons to the same witnesses was already rejected*". Trial Court therefore has held that there is no delay in conducting trial and appellant's right of speedy trial is not defeated.

Order refusing to issue witness summons to the Nodal Officer passed by the trial Court is challenged by prosecution in Criminal Writ Petition No.340/2024, wherein notice is issued on 20.02.2024 and trial is stayed.

8. It is thus clear that trial is not likely to be concluded in near future. Appellant is granted bail in the subsequent crime i.e. crime no.739/2021, registered with Shrigonda Police Station, District-Ahmednagar, at the instance of respondent no.2/victim for offences punishable under sections 354-A, 323, 324, 506 read with section 34 of the Indian Penal Code and sections 3(2)(va), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, by order dated 04.05.2022.

9. Since appellant is in jail since 02.09.2023 i.e. more than for a period of six months, his further custodial detention is not necessary, as the trial is stayed at the instance of prosecution. Applicant need not be detained in jail for indefinite period. Hence, the following order:

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Order date 08.11.2023 passed by learned Additional Sessions Judge, Shrigonda, below Exhibit-263 in Special Case no.150/2019, is hereby quashed and set aside.
- (iii) Appellant Lakhan @ Vinod Kumar Kadade be released on bail in connection with Crime No.708 of 2019, registered with Shrigonda Police Station, District-Ahmednagar for offences punishable under sections 376, 354-A, 307, 323, 504,506 read with section 34 of the Indian Penal Code and under sections 4(i) 1(s), 3(1)(r)(s)(w), 3(1)(i)(ii), 3(1)(z)(a) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Atrocities Act, on executing Personal Bond and Surety Bond of Rs.15,000/- with one surety in the like amount.
- (iv) Appellant shall deposit an amount of Rs.5,000/- to the High Court Bar Library, Aurangabad, within two weeks.

- (v) Appellant shall scrupulously follow the conditions imposed on him while releasing him on bail, mentioned in the order dated 20.09.2021.
- (vi) Needless to state that, in case of violation of condition, prosecution and victim are entitled to seek cancellation of bail.

[NITIN B. SURYAWANSHI]
JUDGE