



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**929 CRIMINAL APPEAL NO. 170 OF 2024**

XYZ

VERSUS

VINAYAK VAMANRAO SURYAWANSHI AND ANOTHER

...

Ms. Sunita G Sonawane, Advocate for Appellant

Mr. Ramraje D. Kawade, Advocate for Respondent No.1-accused

Mr. V. M. Jaware, APP for Respondent No.2 State

**CORAM : Y. G. KHOBRADE, J.**

**Dated : 12th November, 2024**

**PER COURT :-**

1. Heard at length Ms. Sunita Sonawane, the learned counsel for the Appellant, Mr. Ramraje Kawade, the learned Counsel for Respondent No.1 and Mr. V. M. Jaware, the learned APP for the Respondent no. 2 State.

2. The appellant/victim instituted present appeal and prayed for cancellation of bail granted on 04.11.2023 by the learned Additional Sessions Judge, Latur in Criminal Bail Application No. 749 of 2023 to the Respondent No.1 accused for the offences punishable under Sections 376(2)(I), 506 of the Indian Penal Code read with Section 3(1),(r),(s),(w) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The learned counsel appearing for the Appellant/victim

canvassed in vehemence that, on 08.10.2023, the appellant victim lodged a FIR with Latur Police Station alleging that prior to seven months, she had been to the house of Respondent No.1/accused for housework. At that time, the accused and his wife were present in the house, but subsequently wife of the accused went for grinding. Thereafter, the accused taken her in a small room and after removing of her clothes, he committed rape on her. Since the accused had issued threat, the victim could not disclose said fact to any one. Since stomach of victim was increasing, therefore, her mother had taken her to Hospital, where sonography was performed and then it revealed that the victim was conceived and was carrying seven months' pregnancy. On the basis of said report, initially Crime No. 256/2023 was registered against the accused for the offences punishable under Sections 376(2)(I), 506 of the Indian Penal Code, however, during investigation, it has been revealed that the victim belongs to Scheduled Tribe and, therefore, the offence punishable under Section 3(1),(r),(s),(w) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was added.

4. On 09.10.2023, Respondent No.1/accused was arrested and he was remanded in police custody for few days and

subsequently, he was remanded in judicial custody. Respondent No.1- accused then filed Criminal M.A. No. 749 of 2023 and prayed for releasing on bail. On 04.11.2023, the learned Special Judge & Additional Sessions Judge, Latur passed an order and released the accused on bail in Crime No. 256/2023 on conditions that the accused shall not leave India without prior permission of the Court and he shall not hamper or tamper with the prosecution witnesses and shall not enter into area nearby the residence of the victim till filing of the charge-sheet.

5. The learned counsel for the appellant victim canvassed in vehemence that, Respondent No.1/ accused has committed heinous crime. Respondent No.1- accused is a politically influential person. So also, out of the sexual intercourse, the victim delivered a male child and his DNA test is affirmative with DNA sample of the Respondent/Accused. The caste of the victim is covered under the SC & ST (Prevention of Atrocities) Act, which provides prevention of commission of crime/atrocities against the members of Scheduled Castes and Scheduled Tribes. However, the learned Special Court granted bail to the accused without considering the provisions of law, therefore, prayed for cancellation of the bail.

6. The learned counsel appearing for the appellant/victim further canvassed that the victim is handicap and at the time of incident, she was 30 years old and accused was 53 years old. Therefore, there is huge age gap in between age of the victim and accused. Therefore, it cannot be inferred the victim was consenting party.

7. Per contra, the learned counsel appearing for the Respondent No.1- accused submits that, on 04.11.2023, the learned Special Judge considered all material available on record and enlarged he accused on bail on certain conditions. The appellant victim has not made any averment, whether the Respondent No.1 accused has misused liberty granted to him or breached any terms and conditions of the bail order. So also, there is no averment either accused has issued any threat to witnesses or tampered with any evidence. On the contrary it appears that, during the course of investigation, the accused cooperated the investigating officer and charge-sheet already been filed. Therefore, the ground set out in the appeal are not sufficient to cancel the bail.

8. The learned APP canvased that the Respondent no. 1 has been enlarged on bail for serious offence. Though the accused

did not not misuse liberty still the bail order can be interfered with by the superior Court, if it is transpired that the Courts below have ignored the relevant material on record and not looked into the gravity of the offence or the impact on the society resulting from such order.

9. In support of his submission, the learned APP relied on the case of **Manik Madhukar Sarve & ors. Vs. Vitthal Damuji Meher & others, AIR 2024 Supreme Court 4078.**

10. Needless to say that the victim prayed for cancellation of bail on ground that she belongs to Scheduled Tribe community and the Respondent No.1- accused is politically and financially sound person. The Respondent No.1- accused has taken undue advantage of her poverty and committed heinous offence of rape out of which she gave birth to the child whose DNA test matched with the DNA of the accused.

11. No doubt, on 04.11.2023, the learned Special Court passed an order and enlarged the accused/Respondent No. 1 on bail on conditions that the accused shall not leave India without permission of the Court. He shall not hamper or tamper with the prosecution evidence and shall not enter nearby the residence of

the informant victim till filing of the charge sheet, so also, the accused shall attend the concerned police station for the period of 10 days between 11.00 a.m. to 01.00 pm. and shall cooperate with the investigating agency.

12. Needless to say that, the investigation is completed and the charge sheet is already filed. The victim/appellant has not made any allegation about misuse of liberty by the accused or tampering with any evidence. Nonetheless, the victim herself stated in her FIR that she had been to the house of accused for cleaning utensils and she was 30 years old. The victim/appellant has not brought any material on record to show the Respondent no. 1/Accused has misused the liberty granted to him under bail order or the Respondent No. 1 breached any bail condition or any threat was given to her. Therefore, I do not find that this is a fit case for cancellation of bail order granted by the special Court.

13. In view of the above discussion present appel fails. Accordingly, Criminal Appeal is dismissed.

**( Y. G. KHOBRAGADE, J. )**