



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 238 OF 2024

Kailas Sonyabapu Bhagat

....Appellant

VERSUS

The State Of Maharashtra & Others

.....Respondents

.....

Mr. V.R. Dhorde, Advocate for appellant

Mrs. S.S. Joshi, APP for State

Ms. Sunita R. Shinde, Advocate for respondent No. 3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 03rd MAY, 2024

ORDER :

1. This appeal filed under Section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, takes exception order passed by learned Additional Sessions Judge, Vaijapur, in Criminal Bail Application No. 49/2024, thereby rejecting anticipatory bail application filed by appellant.

2. FIR is lodged by prosecutrix alleging that dispute was going on in respect of property owned by prosecutrix at Jogwada. Therefore she went to Tehsil office and came in contact with Ganesh Nighot (Accused No. 1). On 29.01.2024, Ganesh made a phone call to prosecutrix and told her to come with

Bhagyawant Punde

documents of property at Talwada. Therefore, she reached at Talwada at 6.00 pm. Ganesh asked her about documents and asked her to sit in white colour car. One another person was already there in the car. Thereafter, they proceeded towards Bhavani Mandir. Ganesh stopped car in the forest. Kailas (appellant) alighted from the car and instigated Ganesh to pull prosecutrix out and remove her clothes. Thereafter, Kailas and Ganesh assaulted prosecutrix by slaps and kick blows and abused her in the name of caste. Thereafter, Ganesh committed rape on her in the vehicle. Then she was left at Shivur Bunglow. Both accused threatened that if she discloses incident to anybody, they will kill her. Thereafter prosecutrix went to CIDCO police station at Chhatrapati Sambhajanagar and from there in Bharosa cell vehicle she was brought to Shivur Police Station, where she lodged report.

3. After registration of crime, appellant filed Bail Application No. 49/2024, which is rejected by learned Additional Sessions Judge, Vaijapur, Hence, the present appeal.

4. Heard learned advocate for appellant, learned APP for State and learned advocate for respondent No. 3. Perused the record.

Bhagyawant Punde

5. It is the case of appellant that he has lodged various complaints against one Dnyaneshwar Nighot, due to which action under the Maharashtra Money Lending (Regulation) Act was taken against him and at his instance prosecutrix has falsely implicated appellant in the present crime.

6. Perusal of FIR indicates that alleged incident has taken place at isolated place. Prosecutrix alleges that both accused persons in chorus have abused her in the name of caste, which *prima facie* appears to be unbelievable. Admittedly, alleged incident of humiliating prosecutrix in the name of caste has not taken place in a public view. In view of these facts, *prima facie*, offences under Atrocity Act would not be applicable to the facts of the present case. Hence, bar under section 18 would not be applicable to the present case.

7. Admittedly, prosecutrix was not acquainted with appellant, therefore, it is difficult to believe that without any reason appellant would slap her and abuse her in the name of caste. There are no allegations against appellant that he has committed sexual assault on prosecutrix. However, it is the case of prosecution that appellant has instigated and abetted commission of rape by accused No. 1.

8. Learned APP has pointed out that tower location of cell phone of appellant was at village Loni Khurd, which is 5 kilometers away from village Talwada, where alleged incident has taken place. This, however, creates doubt about the allegations made by prosecutrix in the FIR against the appellant.

9. Charge sheet is filed in the present crime on 30.03.2024. Appellant was granted interim protection and he has co-operated in the investigation. Nothing is to be recovered from appellant, hence, his pre-trial custodial detention is not necessary. Trial is not likely to commence and conclude in near future.

10. In the result, appeal is allowed.

11. Order dated 28.02.2024, passed by learned Additional Sessions Judge, Vaijapur, in Criminal Bail Application No. 49/2024 is hereby quashed and set aside.

12. Interim protection granted to appellant by order dated 11th March, 2024 is confirmed.

13. Appellant shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI, J.]