



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

39 CRIMINAL APPEAL NO. 369 OF 2024

1. Yogesh Karbhari Gade
2. Pravin @ Lakhan Sopan Desai
3. Sampat Karbhari Gade ...Appellants

Versus

1. The State of Maharashtra
2. The Superintendent of Police, Beed
3. XYZ ...Respondents

Advocate for Appellants : Mr. Shashikant E. Shekade
APP for Respondent Nos. 1 and 2: Mr. B.B. Bhise
Advocate for Respondent No.3 : Mr. I. K. Wagh

.....

CORAM : SHIVKUMAR DIGE, J.
DATED : 19th AUGUST, 2024.

PER COURT :-

1. This appeal is preferred against the order dated 03.04.2024 passed by the Additional Sessions Judge-2, Beed in Criminal Bail Application No.273 of 2024 filed in pursuance of crime No. 47 of 2024 registered with Ambhora police station, district Beed for the offences punishable under sections 376, 366, 313, 506, 34 of I.P.C. and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. It is the prosecution's case that the informant is sugarcane labourer and the appellant No.1 is Mukadam of the group of

labourers of sugarcane cutters. It is alleged that in the month of January 2021, the appellant No.1 took the informant forcibly in his Scorpio vehicle on the count that some amount was remained with the informant and in the said vehicle, he sexually assaulted the informant. It is alleged that the appellant No.1 was stating the others to believe that the informant is his wife. It is alleged that when the informant was pregnant, the appellant No.1 forcefully terminated the said pregnancy with the help of appellant No.2. It is alleged that when the informant's father asked the appellant No.1 whether he is performing the marriage with the informant or not, at that time, the appellant No.1 refused for the same. Thereafter, mobile of the appellant No.1 was kept on switched off mode. The appellant No.3, who is brother of appellant No.1, had threatened the informant to kill her if she discloses about the incident of sexual assault done by the appellant No.1. It is alleged that the informant belongs to Scheduled Caste and the appellants were aware about it. In spite of having the said knowledge, the appellant No.1 has sexually assaulted the informant. Hence, complaint was lodged against the appellants.

3. It is the contention of the learned counsel for the appellants that the appellants have been falsely implicated in this case. The appellant No.1 has filed the suit for recovery of the amount against the informant and her family members. When they received

summons of the said suit, on the next day, this false complaint is filed against the appellants. There is delay of more than four years to file the complaint. The appellant No.1 had no any physical relations with the informant. In the F.I.R. it is not alleged that the appellants had abused the informant on her caste. Considering the allegations against the appellants, their custodial interrogation is not required. Hence, requested to allow the appeal.

4. It is the contention of the learned APP alongwith learned counsel for respondent No.3 that the informant is sugarcane labourer. The appellant No.1 is the Mukadam of the said labours' group. The appellant No.1 sexually assaulted the informant on the count that some advance amount was remained with the informant. The appellant No.1 had forcibly kidnapped the informant in his Scorpio vehicle and sexually assaulted her. The appellant Nos. 1 and 2 forced the informant to take the pills and caused miscarriage of pregnancy of the informant. It is the contention of learned A.P.P. and learned counsel for respondent No.3 that the suit is filed only to harass the informant and her family members as the work is already done for the said advance amount and no amount is due on the informant or her family members, so it has no relevance with lodging of the present complaint. The appellant No.2 has helped the appellant No.1 in doing the miscarriage of pregnancy of the informant

whereas the appellant No.3 had threatened the informant to kill her. Considering the allegations against the appellants, their custodial interrogation is required and requested to dismiss the appeal. Learned A.P.P. further submitted that there is bar under Section 18 of the Atrocities Act. He relied upon the judgment of this Court (Principal Seat at Bombay) in Criminal Appeal No. 1147 of 2018, decided on 13.02.2019.

5. I have heard all the learned counsel. Perused the F.I.R., the police papers produced on record and the impugned order passed by the Sessions Court. It appears that the allegations are made against the appellant No.1 in respect of first sexual assault made in the month of January, 2021 and thereafter it continued till 2023. In these years, no complaint was filed by the informant against the appellants. The informant is married lady and she is major. It appears from the record that the appellant No.1 has filed suit for recovery of the amount due from the informant and her family members and after receiving summons of the said suit, the present complaint is lodged. Considering the facts that there is delay in lodging the complaint, the informant is major and in the F.I.R. there are no allegations against the appellants that they abused the informant on her caste, the custodial interrogation of the appellants is not required. I have gone through the case law cited by learned A.P.P. The facts of the cited

case law and present case are different, hence not applicable. In view of above, I pass the following order :-

ORDER

- (i) The appeal is allowed.

- (ii) The order dated 03.04.2024 passed by the Additional Sessions Judge-2, Beed in Criminal Bail Application No.273 of 2024 is quashed and set aside.

- (iii) The interim anticipatory bail granted to the appellants vide order dated 17.04.2024 stands confirmed on the same terms and conditions with following modification:-
 - (a) the appellants shall attend the concerned police station as and when required by the Investigating Officer.

(SHIVKUMAR DIGE, J.)

rlj/