IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

906 CRIMINAL APPEAL NO. 376 OF 2024

Akash Anil Vitkar

..APPELLANT

-VERSUS-

1. The Superintendent of Police
2. The Police Station Officer
3. XYZ

..RESPONDENTS

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Advocate for Appellant : Mr. Rahul R. Karpe
APP for Respondent/State : Ms. P.V. Diggikar
Advocate for Respondent no.3 : Ms. Varsha M. Shelke

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CORAM : **SHIVKUMAR DIGE, J.**

DATE : 4th July, 2024.

P.C.:

1. This appeal is preferred against the order dated 06.04.2024 passed by Additional Sessions Judge, Shrigonda in Criminal Misc. Application No.158 of 2024 filed in pursuance of FIR No.0032 of 2024 registered with Karjat Police Station, Tq. Karjat, Dist. Ahmednagar, for the offence punishable under sections 376, 376-D, 354-D, 307, 324, 506 of the Indian Penal Code (For short, "IPC") read with section 3(2)(v), 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. It is prosecution's case that informant lodged report to the police stating that the appellant used to call on her mobile and telling that he likes the informant. On 21st January, 2024, when the informant had gone to back side of her house to answer nature's call, at that time the

appellant came there. He lifted the informant and took her nearby area and sexually assaulted her. When the informant tried to shout the appellant pressed her mouth and he cut her thumb of right hand with bled and tried to kill her by pressing her neck. It is alleged that the appellant threatened the informant that he will kill brother and father of the informant. When the appellant saw the brother of the informant is coming on motorcycle, he fled away from the incident spot. Family members of the informant inquired her about the injury caused to her thumb, she told the family members that the injury caused due to bled. Informant narrated the incident to her friend Rutuja Mandge. She advised her to told these facts to father. On the say of friend Rutuja, the informant narrated the incident to her father. Thereafter, she lodged the complaint against the appellant. Thereafter, police recorded supplementary statement of the informant and in the said supplementary statement, the informant has alleged that one Mr.Krishna Gunjal sexually assaulted her on the same day and at the same time along with appellant.

3. It is contention of learned counsel for the appellant that the appellant has been falsely implicated in this case. While medical examination, the victim has stated before the doctor that the appellant has barged in the house and sexually assaulted her, whereas in the F.I.R., it is stated that the incident happened on the backside of the house of the informant. The learned counsel further submitted that

there is three days delay in lodging the F.I.R. The learned counsel further submitted that the police has recorded the statement of witness Rutuja Mandage, friend of first informant. In her statement, she has stated that the appellant did not tell her about the incident happened with her. It shows false involvement of the appellant. The learned counsel further submitted that co-accused has already been released on regular bail. The further detention of the appellant is not required, hence requested to allow the appeal.

4. It is contention of learned APP along with learned counsel assisting to P.P. that the informant has categorically stated about the incident happened with her. There is no reason to her to implicate the appellant in false case. The medical papers show that informant had received injury to her thumb. It corroborates her version of sexual assault on her by the appellant. The learned counsel further submitted that if the appellant is released on bail, he may threaten the prosecution witnesses, hence requested to reject the application.

5. I have heard all the learned counsel. Perused the F.I.R. and police papers produced on record.

6. There is three days delay in lodging the F.I.R. In the F.I.R. the informant has stated that she had narrated the incident to her friend Rutuja and on her say, she told about the incident to her father. In the statement of Rutuja given to police, she has stated that the informant did not tell her about the incident. She has inquired with informant

about the injury caused to her thumb, but she did not tell anything. While conducting medical examination the informant has stated that the appellant sexually assaulted her by barging in house whereas in the F.I.R. it is mentioned that the incident happened backside of her home. In F.I.R. informant has not stated that co-accused had also sexually assaulted her with applicant. Investigation is completed. Charge-sheet has been filed. Considering all these aspects, further detention of the appellant is not required, hence I pass the following order :-

ORDER

(i) The appeal is allowed.

(ii) The order dated 06.04.2024 passed by Additional Sessions Judge, Shrigonda in Criminal Misc. Application No.158 of 2024 is quashed and set aside.

(iii) The appellant in connection with FIR No.0032 of 2024 registered with Karjat Police Station, Tq. Karjat, Dist. Ahmednagar, for the offence punishable under sections 376, 376-D, 354-D, 307, 324, 506 of the Indian Penal Code read with section 3(2)(v), 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act be released on executing personal bond in the sum of Rs.20,000/- with one surety of the like amount, on the following conditions :-

(a) the appellant shall attend the concerned police station as and when required by the Investigating Officer.

(b) the appellant shall not enter the village/city where the informant resides till recording of evidence of first informant.

[SHIVKUMAR DIGE, J.]

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