



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 900 OF 2024

1. Nilesh S/o Satish Nikam
2. Swapnil Shivaji Wagh

VERSUS

The State Of Maharashtra And Another

- Mr. N. N. Desale, Advocate for the Appellant
- Ms. M. L. Sangit, APP for the Respondent/State
- Mr. R. M. Gaikwad, Advocate for the Respondent No. 2 (appointed)

CORAM : R.M. JOSHI, J
DATE : OCTOBER 21, 2024

PER COURT :

1. This Appeal is for regular bail in connection with Crime No. 157/2024 registered with Pimpalner Police Station, Dist. Dhule for the offences punishable under Sections 376(D) of the Indian Penal Code and Sections 3(1)(f), 3(2)(v) and 3(1)(2)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. First information report indicates that it is a case of the Informant/Victim that she along with her 19 years old son had been to the spot of the incident. They met present Appellants. They advised her to go to

Bailbazar ground and to sleep there in a shed. On this she and her son told them that they are waiting for a vehicle. It is alleged that at that time a person wearing black shirt caught hold of her and starting pulling her. Her son tried to save her, however, he was pushed on the ground by another person. They both took her to the ground and forcibly sexual intercourse was committed with her one after another. She claims that thereafter she came to the spot where her son was there. She narrated the incident to her son and both of them went to the ATM centre which was there nearby to the place of incident. After reaching the said ATM centre, they narrated the incident to the watchman and asked for the address of the police station and accordingly, after reaching to the police station report is lodged.

3. Learned Counsel for the Appellants submits that now the investigation is over and charge-sheet is filed. According to him, there is no evidence in order to indicate that this is a case of gang rape. It is his submission that the medical evidence does not indicate causing of any injuries to the private parts of the

victim. In so far as the injuries seen i.e., abrasions to the elbow, it is sought to be contended that in all probability this could be a case of consensual relationship at that place and when her son got knowledge about the same, the report is sought to be lodged. It is his further submission that there are serious inconsistencies in the statement of witnesses. It is contended that one of the witness who also claim that similar incident had occurred with her, her statement under Sections 161 and 164 CrPC are totally different. It is argued that Appellants have no criminal antecedents and they are not likely to flee from justice.

4. Learned APP and learned Counsel for victim opposed the said submissions. According to them, the statement of victim itself is sufficient to hold that the Appellants herein have committed forcible sexual assault on her. They drew attention of the Court to the medical evidence which indicates causing fo injuries to the elbow of victim. The attention of the Court is also drawn to the statement of watchman of ATM who claims that the victim along with her son came to the ATM and

disclosed occurrence of incident to him. It is their submission that since another incident of similar nature had occurred with a lady witness, this is not a fit case for grant of bail.

5. There cannot be any dispute with regard to the submissions of learned APP that the statement of victim herself would be sufficient in certain cases if her statement found to be reliable for convicting accused. At this stage, this Court is required to see as to whether her statement is consistent with the material placed on record during the course of investigation. *Prima facie* perusal of the charge-sheet though indicates that there are two abrasions caused on both elbows of the victim, there is no medical evidence to indicate that this is a case of gang rape. There are no injuries found on the private parts or any injury caused to the informant. This Court is conscious of the fact that the causing or not causing of injuries would not be itself a ground for believing the case of the accused, however, at this stage, it could be seen from the charge-sheet that there are material inconsistencies not only in the statement of victim

herself but also in the statement of another lady who claims to be victim of the crime of present Appellants. In so far as the statement of said lady is concerned, she has changed her version on three occasions i.e., at the time of disclosing the incident to the watchman, recording the statement under Section 161 CrPC so also while recording the statement before JMFC under Section 164 CrPC. Moreover, it is difficult to accept that when the said lady was accompanied by her husband and during the period he went for attending nature's call, she was ravished by present Appellants.

6. As far as victim is concerned, she specifically claims that her son was along with her. There is nothing to indicate that any resistance was registered by her son when he had seen that his mother was forcibly taken away by two persons. Apart from this, she specifically claims that after occurrence of the incident she along with her son went to the ATM centre and disclosed the incident to the watchman. The transcript of the CCTV footage at ATM centre does not show that the victim had ever been there. This Court, therefore, finds substance in the contention of the

learned Counsel for the Appellants that this could be a case of false implication for the reason that son of the victim came to know about incident.

7. Having regard to these facts and also in view of the fact that Appellants have no criminal history, it is a fit case for grant of bail. Hence, the order:

O R D E R

- (i) Appellants in connection with Crime No. 157/2024 registered with Pimpalner Police Station, Dist. Dhule for the offences punishable under Sections 376(D) of the Indian Penal Code and Sections 3(1)(f), 3(2)(v) and 3(1)(2)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, shall be released on bail on furnishing PB & SB bond of Rs. 25,000 (Rupees Twenty Five Thousand Only) each with one solvent surety in the like amount.
- (ii) They shall attend the concerned police station as and when required.
- (iii) They shall not contact the witnesses directly or indirectly.
- (iv) Fees of appointed Counsel is quantified at Rs. 10,000/- (Rupees Ten Thousand Only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(R.M. JOSHI, J.)