



Diksha Rane

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.887/2023

ATUL MOHAN BABAR

..APPELLANT

VS.

THE STATE OF MAHARASHTRA & ANR.

..RESPONDENTS

Adv. Sanjeev B. Deore a/w. Adv. Sameer Parkar for the
appellant.

Smt. S. D. Shinde, APP for the State.

Adv. Veerdhaval Kakade for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 6, 2024.

ORAL JUDGMENT :

1. The respondent no.2 has engaged an advocate. Therefore, the appearance of Advocate Ms. Trupti Khamkar who was appointed for the respondent no.2 through the High Court Legal Services Committee is discharged. I express my gratitude for the able assistance rendered by the advocate Ms. Trupti Khamkar for representing the respondent no.2 till now.

2. Heard learned counsel for the appellant. Learned APP for the State as well as learned counsel for the respondent no.2 opposed the appeal.

3. This appeal is filed challenging the order dated 3/8/2023 passed by the Special Judge, Satara, rejecting the pre-arrest bail application made by the appellant.

4. The First Information Report (FIR) No.273/2023 is registered against the appellant for the offence punishable under Sections 376, 376(2)(n), 506 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 3(1)(w)(i) & (ii), 3(1)(s), 3(2)(va) and 6 of the of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter 'the Atrocities Act' for short) dated 20/7/2023 with Bhuij Police Station, Satara.

5. The statement of the prosecutrix was recorded on 20/7/2023. It is alleged by the prosecutrix that there is a cattle shed which belongs to the appellant which is adjacent to her house. The appellant, sometime in the month of February 2023, on the pretext of making friends with her, asked her out of her house at night. The prosecutrix refused. The prosecutrix is married, staying with her family in her matrimonial home. Thereafter, sometime in the month of March 2023, at night, the appellant asked the prosecutrix to come out of the house after her family members were fast

asleep and forcibly took her to the cattle shed where she alleged that he committed the act which is an offence under the aforesaid sections. On 15/7/2023, the appellant indulged in the similar act against the prosecutrix. The prosecutrix then informed her husband.

6. *Prima facie*, there is a delay in registering the FIR. It is the contention of learned counsel for the appellant that there are some disputes between the appellant and the complainant over the cattle shed. *Prima facie*, on a reading of the FIR, the possibility of consensual relationship cannot be ruled out. It is nowhere alleged that the appellant was aware of the caste to which the prosecutrix belongs.

7. Though the appeal is vehemently opposed by the respondent no.2, I am inclined to allow the appeal as the bar under Section 18 of the Atrocities Act may not apply. An apprehension is expressed by the respondent no.2 that as the cattle shed is adjacent to the house of the prosecutrix, there is every possibility that the appellant will threaten the prosecutrix.

8. Learned counsel for the appellant submitted that the appellant is residing at a distance of 5 to 6 kms. from the

place of residence of the prosecutrix. A statement is made on instructions that the appellant shall not enter the vicinity of the area where the prosecutrix is residing. Statement is accepted. Hence, the following order :-

ORDER

- (a) The appeal is allowed.
- (b) The order dated 3/8/2023 passed by the Special Judge, Satara, is quashed and set aside.
- (c) Interim order dated 17/8/2023 is confirmed.
- (d) In the event of the arrest, the appellant be enlarged on bail on furnishing P.R. bond in the sum of Rs.20,000/-, with one or two sureties in the like amount.
- (e) The appellant shall co-operate with the investigation and shall report to the investigating officer as and when called.
- (f) The statements made hereinbefore in the order on behalf of the appellant to be abided by.
- (g) The appeal is disposed of.

(M. S. KARNIK, J.)