

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 999 OF 2024

Manik Suresh Narayanpethakar

... **Appellant**

Versus

The State of Maharashtra And Anr.

... **Respondents**

Mr. Viresh Purwant for the Appellant.

Ms. Shilpa Gajare-Dhumal, APP for the Respondent No.1-State.

Mr. Priyal Sarda a/w Mr. Shubham Sane & Mr. Rajesh Ranglani for Respondent No.2.

Mr. Pradeep Zalte, API is present.

Mr. Sharad D., HC 758 is present.

Mr. Ashpak Shaikh, HC 1826 is present.

CORAM : SANDEEP V. MARNE, J.

DATE : 12 SEPTEMBER 2024.

P.C. :

1) This Appeal is filed challenging the Order dated 2 September 2024 passed by Additional Sessions Judge, Solapur rejecting the application filed by the Appellant for bail under provisions of Section 483 of the Bhartiya Nagrik Suraksha Sanhita 2023 (BNSS) in connection with CR No. 273 of 2024 registered with Solapur Taluka

Police Station for offences punishable under sections 376 and 506 of the Indian Penal Code, as well as offences punishable under Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act read with Sections 3 and 25 of the Indian Arms Act.

2) I have heard Mr. Purwant, the learned counsel appearing for Appellant, Mr. Sarda, the learned counsel appearing for Respondent No. 2 and Ms. Shilpa Gajare-Dhumal, the learned APP appearing for Respondent-State. Mr. Sarda is permitted to file Vakalatnama on behalf of Respondent No.2 within a period of one week from today.

3) Perusal of the FIR statement would indicate that the FIR is lodged on 30 May 2024 in connection with the alleged incident of 16 February 2024 in which the accused apparently took the victim to a lodge and committed rape on her. The FIR statement also alleges video recording by the accused on his mobile phone. The FIR statement alleges that after the incident of 16 February 2024, Complainant went to her native place at Uttar Pradesh on 17 February 2024, where Appellant kept on threatening the Complainant on phone of killing her and making the video viral. In the above background, the FIR is lodged by the Complainant on 30 May 2024.

4) Appellant was arrested on 31 May 2024 and has been in custody since then. After conduct of investigations, the Sub Divisional Police Officer has prepared a report which is placed on record. Apart from various other inconsistencies in the story of the Complainant, the

most striking feature of the report of Sub Divisional Police Officer is that the CDR of the Phone of accused shows his presence at Rupa Bhavani Road, Budhavar Peth, Solapur at 6.00 p.m. on 16 February 2024 which is the time at which the crime was allegedly committed. So far as the Complainant is concerned, her CDR record reveals that she was travelling between Bhigwan to Pune at the same time. Thus, presence of neither the accused nor Complainant at the concerned lodge is reflected from the CDR of both of them. In fact from the CDR record it appears that the Complainant was at distance more than 150 kms away from Solapur at the relevant time. Furthermore, though the Complainant alleges that the accused made a phone call to her on the date of incident, the CDR does not indicate even a single phone call between them on the concerned date. Considering the stage at which as well as the limited purpose for which the report is being considered, it is not necessary to make reference to each and every inconsistency highlighted in the said report. The report was placed before the learned Judge while deciding the application filed by the Appellant for bail. Rather than discussing the contents of the report, the learned Judge has relied upon four Affidavits filed at the behest of the Complainant and has laid stress on the affidavit of the Complainant for the purpose of denying bail to the Appellant. In my view, the learned Judge ought to have considered the CDR of Appellant and Complainant which clearly indicate their absence from the scene of crime at the relevant time. Perusal of the order of the learned Judge however indicates that no consideration is given to the said vital aspect. The Order of the learned Judge thus suffers from complete non application of mind and vice of perversity.

5) Mr. Sarda, the learned counsel appearing for Respondent No. 2 would strenuously submit that the Investigating Officer is in hand in gloves with the Appellant and has deliberately filed a false report. While it is not necessary to go into the issue of correctness of statements made in the report of the Investigating Officer, since the same is pending acceptance before the learned Judge, it would be sufficient to observe that Mr. Sarda is unable to explain presence of the Complainant at a distance of more than 150 kms away from the venue of the crime on concerned date and time. No material is produced before the learned Judge to question the correctness of CDR relied upon by the Investigating Officer. Mr. Sarda would pray for time to produce additional material on record. He would submit that his client is in Agra and was given intimation about filing of the present Appeal on 11 September 2024. He has therefore requested for time upto 18 September 2024 for placing the additional documents on record.

6) In my view, considering the material on record detaining Petitioner in custody any longer would clearly amount to his illegal detention. Apart from the fact that the report of the Investigating Officer clearly points out gross inconsistencies in the story of the Complainant, the Court cannot turn blind eye to the fact that on the basis of the Complainant's complaint, the Appellant is incarcerated in custody since 31 May 2024. It is also a matter of fact that the Investigating Officer has not filed chargesheet against the Appellant and Appellant is otherwise entitled to default bail under sub Section 2 of Section 187 of BNSS.

7) Considering the material on record, I am of the view that the Appellant deserves to be enlarged on bail. The apprehension expressed by the learned Judge about Appellant pressurizing the Complainant does not appear to valid in view of the admitted position that the Appellant is currently based at Agra. Therefore, I do not see any possibility of Appellant contacting or pressurizing the Complainant for the purpose of continuing his incarceration in the custody.

8) I accordingly proceed to pass the following order:

a) Order dated 2 September 2024 passed by the Additional Sessions Judge, Solapur is set aside.

b) The Appellant who is arrested in connection with CR No. 273 of 2024 registered with Solapur Taluka Police Station for offences punishable under sections 376 and 506 of the Indian Penal Code, as well as offences punishable under Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of SC & ST Act read with Sections 3 and 25 of the Indian Arms Act, he shall be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

c) Appellant shall furnish identity and address proof of himself and of his two blood relatives while furnishing sureties.

- d) Appellant shall attend Trial Court regularly unless exempted from personal appearance.
 - e) Appellant shall not pressurize the informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.
 - f) The Appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Trial Court as well as to the concerned Police Station in writing.
 - g) The Appellant shall cooperate with the completion of investigations by remaining present before the investigating officer as and when summoned.
- 9) With the above directions, the Appeal is allowed and disposed of.

[SANDEEP V. MARNE, J.]