



Diksha Rane

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

CRIMINAL APPEAL NO.1208/2023

BHIKAJI BABURAO KAMBLE

..APPELLANT

VS.

THE STATE OF MAHARASHTRA & ANR.

..RESPONDENTS

Adv. Kunal V. Patil a/w. Adv. Prashant P. Raul for the
appellant.

Mr. A. R. Patil, APP for the State.

Adv. Omneel A. Jadhav for the respondent no.2 (appointed
through legal aid).

CORAM : M. S. KARNIK, J.

DATE : JANUARY 17, 2024.

ORAL JUDGMENT :

1. Heard learned counsel for the appellant, learned APP
for the State and learned counsel for the respondent no.2
appointed through Legal Aid to represent the respondent
no.2.

2. The appellant is arraigned as an accused no.2 in
connection with First Information Report (FIR) No.71/2023
registered with Shirol MIDC Police Station, Kolhapur, on
2/4/2023 for the offence punishable under Sections 452,
363, 364-A, 386, 397, 376, 376-D, 354, 354-A, 341, 504,
506, 120-B of the Indian Penal Code (hereafter 'IPC' for

short) read with Sections 3(1)(r)(s), 3(1)(w)(i)(ii), 3(2)(va), 3(2)(v), 6 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Learned APP and learned counsel for the respondent no.2 submitted that the accusation against the present appellant is serious. It is submitted that the statement of the prosecutrix is corroborated with that of eye witness Atul Tanaji Gaikwad.

4. The date of the incident is 2/3/2023. It is the case of the prosecution that the son of the prosecutrix was a gambler and had lost money in gambling which he owed to the accused persons. The son of the prosecutrix was not paying the money to the accused. The five accused, therefore, forcibly entered in the house of the prosecutrix and demanded return of the money. The son of the prosecutrix was not present in the house. It is alleged that the accused persons forcibly made the prosecutrix and one Atul Gaikwad sit in the car. It is alleged that the prosecutrix was made to sit between the accused persons on the front seat. The accused persons misbehaved with the prosecutrix and molested her. The accused persons committed the acts

which constitutes the offence under the aforesaid provisions. After the recovery of some part of the money, the prosecutrix and the said Atul Gaikwad were let off.

5. It is the submission of learned counsel for the respondent no.2 that the acts committed by the accused persons was seen by the witness Atul Gaikwad in the rear view mirror of the car. The witness Atul Gaikwad was pleading with the accused persons that they should spare the prosecutrix and not indulge in such acts.

6. The FIR was registered on 2/4/2023, one month after the alleged incident. Learned counsel for the respondent no.2 submitted that the delay has been sufficiently explained as the daughter-in-law of the prosecutrix was pregnant at the relevant time and therefore, the prosecutrix did not lodge the complaint on the apprehension that any such step may affect her daughter-in-law's health condition.

7. Even from the statement of the prosecutrix it is seen that her son owed money to the accused persons. The accused no.1 is the main accused. The appellant/accused no.2 had accompanied the accused no.1. No doubt, there are allegations in the statement of the prosecutrix even as

regards the role of the appellant/accused no.2. In the facts and circumstances of the present case, having regard to the delay in lodging the FIR the possibility of the prosecutrix and the witness exaggerating the allegations cannot be ruled out so far as the present appellant is concerned, prima facie it does not appear that the provisions of Atrocities Act are attracted as the motive of the accused as per the allegations was to recover the money which was owed to them.

8. There is one criminal antecedent reported against the appellant under Section 452 of the IPC. The appellant was arrested on 3/4/2023 and now is in custody for more than nine months with the possibility of the trial concluding any time soon seems remote. The charge-sheet has been filed. In such circumstances, I am inclined to enlarge the appellant on bail, subject to imposing some conditions. Hence, the following order.

: ORDER :

(a) Appellant – Bhikaji Baburao Kamble shall be released on bail, in connection with FIR No. 71/2023 registered with Shirol MIDC Police Station, Kolhapur, on furnishing P.R. Bond of Rs.15,000/- with one or more sureties in the like amount.

(b) The appellant is permitted to furnish cash bail surety in the sum of Rs. 15,000/- for a period of 6 weeks in lieu of surety.

(c) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(d) The appellant shall not reside in the area of Sadoli Khalasa, Taluka Karveer, District Kolhapur on being released on bail till further orders of the trial Court except for the purpose of reporting to the investigating officer once every two months, the first Monday of the concerned month between 11.00 a.m. and 1.00 p.m. commencing February, 2024.

(e) On being released on bail, the appellant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

9. The appeal is disposed of accordingly.

10. It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(M. S. KARNIK, J.)