



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

CRIMINAL APPEAL NO. 1135 OF 2023

Rajaram Govind Patil

..Appellant

VS.

1. The State of Maharashtra

2. Mrs. Gangu Vaman Nirguda

..Respondents

Mr. Nilesh R. Pandey a/w Ms. Reshma Bhopi, Mr. Sameer Vispute, Mr. Rahul Bhosale i/b Nilesh Pandey, for the appellant.

Mr. S. H. Yadav, APP for the State.

Mr. Kishor Walanju, for Respondent No.2.

PSI- Mr. Ramesh Sangle, Assistant Police Commissioner Office, Panvel Division present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 19, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the appellant, learned APP and learned counsel for the respondent no.2.

2. This is an appeal for quashing and setting aside the order dated 04/10/2023 passed by the trial Court rejecting the anticipatory bail application filed by the appellant in connection with C.R. No. 227 of 2023 registered with Panvel Taluka police station for the offences punishable under sections 354, 504, 506, 509 of the Indian Penal Code, 1860 and under sections 3(1)(w)(i)(ii) and 3(2)(va) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. By order dated 10/11/2023 this Court had passed the following interim order:

“Heard the learned counsel for the Appellant, learned counsel for the Respondent No.2 and the learned A.P.P for the State.

The Appellant is apprehending his arrest in connection with C.R.No.227 of 2023 registered with Panvel Taluka Police Station, Panvel, Dist. Raigad on 08/09/2023, when the Complainant, a woman aged 32 years belonging to Thakur Scheduled Tribe reported to the police station that her modesty was outraged by the Appellant, when she was asked to guard his house on 08/09/2023 and she was deceptively called inside the house and the Appellant wrongfully touched her and outraged her modesty. She was also threatened that if she report the incident to anyone, she will have to face dire consequences.

Upon her narration, the offence under Sections 3(1) (w) (i) and 3(1)(w)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 also came to be invoked alongwith Sections 354, 509, 504, 506 of the Indian Penal Code.

2. A careful reading of the complaint would reveal that it is premised on the basis that she was wrongly touched with sexual intent only on the basis that the Appellant was knowing that she belong to Scheduled Tribe.

When repeatedly asked as to whether she was employed with the Appellant, the answer is in the negative, but as per the narration in the complaint, she used to work in a Resort, located next to the Farmhouse belonging to the Appellant and at times, it is her allegation that she used to be called for work, but whenever she refused to work with him, he used to abuse her.

Surprisingly, if this is the background, there is no

reason why on 08/09/2023, when the Appellant is alleged to have asked her to guard his house, she acceded to the said request and was waiting there, till he returned back.

3. The necessary ingredient of Sections 3(1)(w)(i) and (ii) require that the offence is committed, by specific intention of touching the woman, who belong to the Scheduled Caste and Scheduled Tribe and knowing it very well that she belong to such Caste or Tribe.

Prima facie, the version of the Complainant that the Appellant was knowing her caste has no basis, as she was not in employment of the Appellant, but was working in the nearby Resort. There may be so many persons working in the Resort and there is no reason that the Appellant knew about the caste of each and every person working in the Resort.

For this reason, though the offence complained of appears to be serious in nature and definitely require investigation, but in my considered opinion this does not warrant custodial interrogation.

The learned A.P.P. has placed before me the statements, which are recorded during the course of investigation and which may in turn be compiled in the charge-sheet. But, these statement are merely hear say, except the statement of her husband, who received the phone call from the Complainant about the happening of incident and who accompanied her to lodge the complaint.

4. The learned A.P.P. on instructions from the Investigating Officer states that the purpose of custodial interrogation of the Appellant is to find out, whether any other woman working in the Resort, is also harassed by him and the offence has been committed by him.

It is a strange reason, as if any other woman was so harassed, she would have definitely joined the investigation by this time, as from the statements recorded, it is apparent that the villagers have come to know about registration of the crime against the Appellant by the Complainant.

No doubt, the woman and particularly, the tribal

woman would deserve a protection from such act, but prima facie, since the material indicated in the First Information Report as well as the statements of the witnesses, except the statement of the Complainant, there is no other corroboration.

I deem it appropriate that by way of interim relief, the Appellant stand protected, on the condition that he shall report to the Investigating Officer and render his co-operation in the investigation. “

4. I have heard learned counsel for the respondent no.2 who opposed the appeal. It is submitted that the respondent no.2 is now residing at Bhingarwadi, Taluka Panvel. It is submitted that the appellant is threatening the complainant to withdraw the complaint. Learned counsel for the appellant submitted that there are no threats issued and ensures this Court that the appellant shall not contact the complainant or her daughter. Further, learned counsel for the appellant on instructions of the appellant who is personally present in the Court, makes a statement that the appellant will not enter the area of Bhingarwadi, Taluka Panvel subject to any further orders of the trial Court. Statement is accepted.

5. Learned counsel for the respondent no.2 expressed an apprehension that the complainant's daughter is taking education in the village Nere, Taluka Panvel where the

appellant resides and therefore raised the concern about the safety of the child. To allay such apprehension and to show his bonafides, learned counsel for the appellant on instructions of the appellant submitted that the appellant shall not enter the area of village Nere, Taluka-Panvel till the examination of the complainant's daughter for this academic year which is likely to held in April 2024 is over. The statement is accepted. In view of this statement, it will be open for the respondent no.2 to make an appropriate application before the trial Court for either seeking the continuation of this condition or for imposing any other appropriate condition for the purpose of ensuring the safety and security of the daughter of the complainant. If such an application is made, the same shall be considered on its own merits and in accordance with law and in accordance with the threat perception that may be made out. Moreover, it is always open for the trial Court or appropriate authorities to consider granting protection in terms of the Maharashtra Witness Protection and Security Act, 2017. If an appropriate application is made by the complainant, the same be considered on its own merits.

6. It is made clear that all the observations made by this Court in course of this application are prima facie in nature and for the purpose of considering the grant of pre-arrest bail and shall not influence the trial Court while proceeding with the trial on merits. The trial shall be proceeded on its own merit and in accordance with law on the basis of the evidence that may be adduced without being influenced by any observations made in course of deciding this application.

7. The affidavit of the appellant is taken on record and marked 'X' for identification. The appellant to abide by the statements recorded hereinabove. It is made clear that if there is any breach on the part of the appellant of any of the conditions, the appellant is put to notice that strict view thereof will be taken.

8. The appellant is personally present in the Court and agrees to abide by the statements which are made by learned counsel for the appellant on his instructions and those made in the affidavit. In the facts and circumstances of the case, I am inclined to allow the appeal and confirm the interim order. Hence, the following order.

ORDER

i) The appeal is accordingly allowed.

ii) In the event of the arrest in connection with C.R. No. 227 of 2023 registered with Panvel Taluka Police Station, Panvel, District-Raigad, the appellant – Rajaram Govind Patil shall be released on bail on furnishing P.R. Bond to the extent of Rs.50,000/- with one or more sureties in the like amount.

(iii) The appellant shall not enter the area of Bhingarwadi, Taluka-Panvel till further orders of the trial Court.

(iii) The appellant shall report to the investigating officer of the concerned police station as and when called and co-operate with the investigation.

(iv) 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 appellant shall not tamper with evidence.

(v) The appellant shall abide by the statements

made hereinabove and those in the affidavit.

v) Liberty to apply in case of difficulty.

9. The appeal is disposed of.

(M. S. KARNIK, J.)