



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

APPEAL NO. 1236 OF 2023

SAMEER RASUL SHAIKH ..APPELLANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

**WITH
APPEAL NO. 894 OF 2023**

BHARAT BHABUTMAL OSWAL ..APPELLANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

**WITH
APPEAL NO. 925 OF 2023**

KAVITA SHIVAJI NIKAM ..APPELLANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

**WITH
APPEAL NO. 1234 OF 2023**

SHRIKANT RAJARAM NIKAM ..APPELLANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr. Rupesh Zade a/w Adv. Priyanka Gupta for the Appellants
in Appeal Nos. 1236/23, 925/23 and 1234/23.

Mr. A.R. Gole for the Appellant in Appeal No. 894/23.

Ms. Nisha S. Gaikwad for Respondent No.2 in all appeals.

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

CORAM : M. S. KARNIK, J.

DATE : JANUARY 02, 2024

JUDGMENT:

1. Heard learned counsel for the appellants, learned counsel for respondent No.2 and learned APP for the State.

2. The First Information Report (FIR) No. 390 of 2023 dated 25/06/2023 is filed by the complainant against various accused for the offence punishable under Sections 376, 420, 504, 506 read with 34 of the Indian Penal Code and Sections 3(1)(r),(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act" for short) with Baramati City Police Station. Accused Nos. 2, 3, 5 and 6 are before this Court by way of aforesaid appeals challenging the orders passed by the Special Court rejecting the application for anticipatory bail filed by the appellants.

3. These appeals are opposed by the learned APP. It is contended that the accusations are serious in nature. Learned APP further submitted that the complainant belongs to the scheduled caste community was subjected to such atrocities which constitute an offence under the aforesaid provisions.

4. Though the complainant was represented on the previous occasion through an advocate, there was no appearance on her behalf later on. I have heard learned counsel Ms. Nisha Gaikwad appointed through legal aid on behalf of the complainant. She has submitted that the accusations are serious and these appeals, therefore, be rejected.

5. This Court while granting interim protection to accused No.2 - Bharat Bhabutmal Oswal on 29/08/2023 passed the following order:-

"1. At the outset, the learned counsel seeks permission to implead the complainant as Respondent no.2, since she is necessary party in the Appeal fled by the Appellant, seeking protection from arrest in the subject C.R., which invoked Sections 376, 420, 504, 506 read with Section 34 of the Indian Penal Code as also Sections 3(1)(r), (s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The amendment is permitted to be carried out forthwith.

Upon the Complainant being added as a party Respondent, the Investigating Officer of Baramati City Police Station, shall serve the notice of proceedings upon Respondent No.2, intimating that the Appeal is fled by the Appellant and she has right to oppose the prayer of the Appellant, either by appearing in person or through the counsel of her choice or if she is unable to arrange for the same, she will be provided a counsel through the Legal Aid

Services.

2. On hearing Mr.Gole, I have perused the complaint, lodged on 25/06/2023, in which the period of occurrence of the offence is described from 04/09/2018 to 16/06/2023.

Perusal of the complaint would reveal that the prime Accused in the C.R. is Accused No.1, whereas the present Appellant is implicated, as Accused No.1 introduced him to the Complainant, who is a Jeweller by profession and, vaguely, without referring to any date or further details being offered, it is alleged that Accused No.1 alongwith present Appellant and other persons, committed rape upon her. Admittedly, she never spoke about the incident nor did she lodge any complaint for all these years. The vagueness of the accusations could be ascertained, only when the complaint is read in its entirety.

3. Considering the obscure nature of allegations about rape and even the allegations as regards the money transactions, which are alleged to have occurred on a subsequent point of time, the Appellant deserve protection from arrest, as prima facie, reading of the complaint do not make out the offences against him.

Till the Complainant is served and mark her appearance, the following order is passed.

: ORDER :

(a) In the event of arrest in connection with C.R.No.390 OF 2023 registered with Baramati City Police Station, Appellant-Bharat Bhabutmal Oswal shall be released on bail on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

(b) The Appellant shall report to the concerned police station on Thursday and Friday between 3.00 p.m. and 5.00 p.m. for a period of two weeks and, thereafter, as and when called for.

(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 and shall not tamper with evidence.

4. Re-notify to 21/09/2023.”

6. The other appellants are protected by interim orders of this Court. The FIR was filed by the complainant on 25/06/2023. The accusations are mainly against accused No.1 - Shivaji. No doubt, there are accusations against the appellant - accused No.2 - Bharat that he too committed rape on the complainant.

7. It is pertinent to note that during the pendency of these appeals, the charge-sheet has been filed against all accused including the appellants. A copy of the charge-sheet has been placed on record.

8. I have pursued the supplementary statement of the complainant dated 28/06/2023 as well as her further supplementary statement dated 29/06/2023. So far as the FIR is concerned, as observed by this Court in the order dated 29/08/2023, the nature of the allegations about the rape is vague without reference to any date or further details being offered. In the supplementary statement dated 28/06/2023, it is alleged that accused No.1 as well as the

appellant - Bharat i.e. accused No.2 with two other unknown accused committed rape on the complainant on 24/03/2023. In the later supplementary statement dated 29/06/2023, it is mentioned that the complainant was raped by these persons on 25/04/2021. Relying on the FIR, learned counsel for the appellants contended that there is a reason for changing the date from 24/03/2023 to 25/04/2021. According to the learned counsel for the appellants this was done as the prosecutrix had narrated in the FIR that all the incidents took place before August 2021 and hence the date change in the statement. However, these are the matters which will be dealt with at the time of trial. I do not want to make any observation at this stage on the contentions raised by the learned counsel for the appellants which may have the effect of influencing the trial. Suffice it is observe that *prima facie* there is a delay in lodging the FIR and considering the vagueness of the accusations, the appellants should not be deprived of the facility of pre-arrest bail.

9. The appellant Kavita i.e. accused No.3 - is the wife of

accused No.1. The appellant Shrikant who is accused No.5 is the real brother of accused No.1. Accused No.6- Sameer is alleged to be the acquaintance of accused No.1. So far as the appellants Shrikant, Sameer and Kavita are concerned, it is alleged that they have abused the complainant in the name of her caste on 19/08/2021 which is the first incident. There are no independent eyewitnesses in respect of this incident. So far as the second incident of caste abuse against these appellants, there are no details set out by the complainant as to when this incident took place. Even in respect of the first incident, *prima facie* the delay is unexplained.

10. The prosecution case is that against the prosecutrix there was a criminal case pending. It is alleged that accused No.1 who works in the police department had assured the prosecutrix that he will help her. He was knowing the prosecutrix since 2018. It is alleged that to help the prosecutrix get rid of the criminal case, accused No.1 had taken monies from her. It is further alleged that accused No.1 assured the prosecutrix that he will ensure

release of her gold ornaments which she pledged with some jeweller. Accused No.1, therefore, introduced the prosecutrix to the appellant i.e. accused No.2 who himself was a jeweller and a money lender. Even according to the prosecutrix there was a monetary transaction between the prosecutrix and accused No.2 in respect of the gold which she had pledged with some other jeweller for which she had taken a loan from the appellant – Bharat.

11. There is nothing on record to indicate that during the period when the appellants were on interim bail, the liberty has been misused or the complainant has been threatened in any manner by these appellants. Taking an overall view of the matter, and in the facts and circumstances of the present case, also considering that the charge-sheet has now been filed, I am inclined to allow these appeals by confirming the interim order passed by this Court as the custody of the appellants is not required. The facts and circumstances of the case are sufficient to overcome the bar under Section 18 of the Atrocities Act.

12. The appeals are accordingly allowed. The interim

orders of this Court stand confirmed.

13. The appellants are put to notice that if they indulge in any activities of tampering with evidence or if the prosecutrix is intimidated or threatened, the same shall be viewed seriously and in such case, it will be open for the respondents/ prosecutrix to apply for cancellation of this bail.

14. In the event of arrest of the appellants in connection with C.R. No. 390 of 2023 registered with Baramati City Police Station, the appellants – Sameer Rasul Shaikh, Bharat Bhabutmal Oswal, Shrikant Rajaram Nikam and Kavita Shivaji Nikam shall be released on bail on furnishing P.R bond to the extent of Rs.25,000/- each with one or two sureties each in the like amount.

15. The appellants shall remain present before the Special Judge on the assigned date of hearing.

16. The appeals are disposed of accordingly.

(M. S. KARNIK, J.)