

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 592 OF 2024**

Kapil Baliram Dhole

}*Appellant*

: *Versus* :

1. The State of Maharashtra

(at the instance of Khadakpada Police

Station, C.R. No. 146/2024)

2. Pushparaj Rahul Jadhav

}*Respondent*

(*Respondent No.2/Orig.*

Complainant)

Mr. Raju Suryawanshi, for the Appellant.

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

Mr. Sanjeev Sawant a/w. Mr. B.K. Barve, Mr. Sandeep Barve, Ms. Sonali Patil i/by. D.K. Barve & Co. for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

Dated : 1 July 2024.

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SHAILESH
SAWANT

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P.C. :

1) This is an Appeal filed under the provisions of Section 14A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (S.C.S.T. Act) challenging the order dated 15 May 2024 passed by the

Additional Sessions Judge, Kalyan rejecting the application filed by the Appellant for bail under the provisions of Section 439 of the Code of Criminal Procedure in connection with C.R. No. 146 of 2024 registered with Khadakpada Police Station for the offences punishable under Sections 307, 364, 324, 341, 143, 145, 147, 149, 504 and 506 of the Indian Penal Code read with Section 3(1)(r)(s)(u), 3(2)(v), 3(2)(va) of the S.C.S.T. Act.

2) I have heard Mr. Suryawanshi, the learned counsel appearing for the Appellant. He would submit that in the FIR lodged on 5 February 2024 or in the statement of the First Informant, Pushparaj Rahul Jadhav, the Appellant was not named. However, when the Appellant accompanied the co-accused, Nitesh Jadhav for his surrender in the Police Station, the Appellant was also arrested on 6 February 2024. That after arrest of the Appellant, supplementary statement of the First Informant, Pushparaj Rahul Jadhav was recorded on 6 February 2024, when he improvised upon the story and named the Appellant. He would further submit that so far statements of three witnesses are concerned, there is considerable delay in recording their statements. Inviting my attention to the statements of Mohan Laxman Jadhav-father recorded on 13 March 2024, Sumeet Dilip Magar recorded on 22 March 2024 and Mubeen Farook Maniar recorded on 7 March 2024, he would submit that statements of Sumeet and Mubeen specifically refer to their presence alongwith the father at the Police Station on the date of the alleged incident. He would submit that if the said three persons were indeed present in the Police Station on the date of the alleged incident, why their statements are recorded after considerable delay has not been explained in any manner. He would take me through the Injury

Certificate to demonstrate that there are no injuries on any vital parts of the body of the injured. That the Injury Certificate would indicate that the injured was conscious when he was examined by the Doctors. That thus, it was possible for the Police to record the statement of the injured on the same day. However, the statement of the injured, Kabir Mohan Jadhav is shown to have been recorded on 8 February 2024.

3) Mr. Suryawanshi, would further invite my attention to the cross FIRs registered by Ms. Sidhi Jaywant Bangar against Kabir Mohan Jadhav and Pushparaj Rahul Jadhav under the provisions of Section 354A, 354(D) (1), 506 read with Section 34 of the Indian Penal Code (IPC) and Section 12 of the Protection of Children from Sexual Offences Act (POCSO). He would submit that the said FIR was lodged on 6 February 2024 in respect of the incident of 5 February 2024. That the said FIR would clearly belie the theory of love relationship between the injured, Kabir and Ms. Sidhi. He would submit that the story woven by the First Informant and the injured, Kabir does not appear to be believable. Section 307 and 364 are deliberately added in the FIR with a view to artificially increase the seriousness of the offences. Lastly, Mr. Suryawanshi, would submit that though two antecedents are sought to be pleaded against the Appellant in the report submitted by the Assistant Police Commissioner dated 6 May 2024, the Appellant has already been acquitted in respect of both the cases. He would accordingly submit that the Appellant deserves to be enlarged on bail.

4) Mr. Sawant, the learned counsel appearing for Respondent No.2 would oppose the Appeal and submit that the case involves serious offences

where the accused have conspired to kill the injured. The accusations in the FIR, as well as in the supplementary statement of the First Informant would clearly indicate meeting of minds between the accused for commission of the crime. That so far as present Appellant is concerned, his name was recorded in the supplementary statement immediately on 8 February 2024. That FIR being not being an encyclopedia, absence of name of the Appellant therein cannot be a ground for enlargement of the Appellant on bail. He would submit that the case clearly depicts an admission on the part of the accused to kill the injured only because he showed the audacity to have love affair despite belonging to Scheduled Caste with girl belonging to Thakkar Caste. He would accordingly pray for dismissal of the Appeal.

5) Ms. Gajare-Dhumal, the learned APP would also oppose the Appeal. She would submit that the wooden log which is used by the Appellant for assaulting the injured has been recovered and the same is found to have been broken into two pieces. She would also draw my attention to the statements of other witnesses to indicate that the allegations made in the FIR are corroborated by several witnesses. She would submit that there are specific allegations against the Appellant of having assaulted the injured with wooden log. That though the chargesheet has been filed on 4 May 2024, no case is made out for grant of bail to the Appellant.

6) I have considered the submissions canvassed by the learned counsel appearing for the parties. The statement of the injured, Kabir recorded on 8 February 2024 indicates that he has claimed love affair with Ms. Sidhi for a period of five years. The age of injured, Kabir as on 8

February 2024 appears to be 17. This would mean that the alleged love affair commenced at Kabir's age of 12 years. This factor, coupled with FIR lodged by Siddhi makes the story of love affair questionable.

7) The Injury Certificate dated 13 March 2024 would indicate that the injured, Kabir was brought to the Hospital when he was conscious. It is therefore incomprehensible as to why the police did not record the statement of injured, Kabir on 5 February 2024 when the incident allegedly occurred. Why there was delay in recording the statement of injured, Kabir has not been explained in any manner. So far as the FIR registered at the instance of the First Informant, Pushparaj Rahul Jadhav is concerned, he has initially not named the Appellant in the FIR. However, his supplementary statement recorded on 6 February 2024 would indicate that he has made a statement that he knew the Appellant very well as he was a neighbouring resident. If Pushparaj knew the Appellant very well, it is not explained as to why he did not name the Appellant in his statement recorded on 5 February 2024. The name of the Appellant came to be added only in the supplementary statement recorded on 6 February 2024.

8) Perusal of the statement of the injured, Kabir recorded on 8 February 2024 would indicate that the main allegation is against Nitesh Jadhav who has apparently assaulted him with iron rod. The fracture injury suffered by Kabir on his finger is also attributed to the assault committed by Nitesh Jadhav by iron rod. There are no injuries on vital parts of body.

9) The police have recorded statement of three persons in order to corroborate the allegations. Mohan Laxman Jadhav is the father of the injured-Kabir who was apparently present in the Police Station on 5 February 2024. However, his statement is recorded on 13 March 2024. Similar is the statement of Mobeen Farookh Maniar who was allegedly present on 5 February 2024, his statement is recorded on 7 March 2024. So far as Sumeet Magar is concerned, who was also allegedly present at the Police Station on 5 February 2023, his statement is shown to have been recorded on 22 March 2024.

10) The entire case against the Appellant is built on the basis of the alleged love relationship between the injured Kabir and Ms. Sidhi. However, Ms. Siddhi has apparently registered FIR against the injured-Kabir and the First Informant, Pushparaj on 6 February 2024 in respect of the incident which allegedly occurred on 15 February 2024. Injured Kabir and the First Informant-Pushparaj Jadhav are facing allegations for the offences punishable under Sections 354A(1) and 354D(1) of the Indian Penal Code in addition to Section 12 of the POCSO Act. Perusal of the said cross FIR lodged by Ms. Sidhi would *prima-facie* throw doubts on the alleged theory of love affair between her and injured-Kabir.

11) Though antecedents of the Appellant in two cases was sought to be highlighted in the report dated 6 May 2024 submitted by the Assistant Police Commissioner, Kalyan it is an undisputed position that the Appellant has been acquitted in respect of both the cases.

12) It appears that the Appellant has been arrested on 6 February 2024 and has been in custody for about five months. The investigations into the crime appear to be complete. Necessary recoveries are already made. The chargesheet has been filed on 4 May 2024 before the Special Judge resulting in registration of Special Case No. 102 of 2024. After considering the overall conspectus of the case, I am of the view that the Appellant has made out a case for his release on bail.

13) The Appeal accordingly succeeds and I proceed to pass the following order :

(a) Order dated 15 May 2024 passed by the Additional Sessions Judge, Kalyan qua the Appellant is set aside.

(b) The Appellant shall be enlarged on bail in connection C.R. No. 146 of 2024 registered with Khadakpada Police Station on cash bail in the sum of Rs.25,000/-. Within a period of 8 weeks, the Appellant shall furnish P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(c) The Appellant shall not enter in the jurisdiction of Titwala, where the injured and the First Informant resides.

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

(e) The Appellant shall attend Trial Court regularly unless exempted from personal appearance.

(f) The 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.

(g) 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.

14) With the above directions, the Appeal is **allowed and disposed of**.

15) Needless to state that the Trial Court shall not be influenced by any of the observations made in the present order while deciding the case.

[SANDEEP V. MARNE, J.]