

(2022) 09 BOM CK 0054

In the Bombay High Court

Case No : Criminal Appeal No.512 Of 2022

Sugriv Manik Karad

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 16-09-2022

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va), 14A, 18
Code Of Criminal Procedure, 1973 — Section 161, 164, 258, 438
Indian Penal Code, 1860 — Section 143, 149, 188, 313, 323, 376(2)(n), 379, 384, 385, 388, 389, 506

Citation : (2022) 09 BOM CK 0054

Hon'ble Judges : Vibha Kankanwadi, J;Rajesh S. Patil, J

Bench : Division Bench

Advocate : S.S. Thombre, S.D. Ghayal, A.A. Nimbalkar

Final Decision : Dismissed

Judgement

Vibha Kankanwadi, J

1 Admit.

2 Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, "the Atrocities Act") challenging the order of rejection of the application for anticipatory bail by learned Special Judge under Atrocities Act/Additional Sessions Judge, Ambajogai in Criminal Bail Application No.346/2022 dated 06.07.2022.

3 Heard learned Advocate Mr. S.S. Thombre for the appellant, learned APP Mr. S.D. Ghayal for respondent No.1 and learned Advocate Mr. A.A. Nimbalkar for respondent No.2.

4 It has been vehemently submitted on behalf of the appellant that the informant – prosecutrix is 33 years old married lady having daughter from her earlier husband. She has contended that disputes arose between herself and the

husband and, therefore, she and her daughter were staying with her parents. The appellant being a political and social leader the prosecutrix and her parents had gone to the appellant to seek his help in getting the dispute between the prosecutrix and her husband redressed.

Since then she came in contact with appellant and he was insisting that she should meet him. She alleges that under the various pretext when he sought favour she resisted but she was abducted on 08.12.2021 and thereafter taken to a hotel, where he had committed forcible intercourse. She got pregnant from the appellant, however, he had caused the abortion done. Similar thing happened on the next occasion which was in April, 2022. She states that in between the appellant was not speaking with her and was avoiding. He quarreled with her and in that he told that she should consume poison. She consumed the poison in anger and then was admitted to hospital. After her recovery, the appellant again started contacting her. She could see another lady with the appellant on 26.06.2022 and, therefore, she went to Police Station to lodge report against him, but, when the appellant came to know that informant came to Police Station, appellant promised her that he would marry her and, therefore, she has not lodged any report. All the while it is stated that the appellant was given promise to marry, but he did not perform. On 27.06.2022 the appellant and his family members had entered the house of the informant and assaulted informant and her family members. It is then stated that they had taken two mobile phones, informant's purse and had deleted the data of her mobile. Threat was given that they would see how she resides in the village.

5 The learned Advocate for the appellant further submitted that in fact, there was love affair in between the appellant and the informant and that could be seen from the photographs, which were tendered across the bar by the learned Advocate for the appellant. So also he has tendered WhatsApp chats as well as messages. According to the appellant, the prosecutrix is a consenting party. All these facts were not considered by the learned Special Judge. The custodial interrogation of the appellant is not necessary. Nothing had happened which can be said to have been done within public view by the appellant and, therefore, wrong sections have also been applied. The appellant is having good reputation in the political as well as social background. The appellant is ready to abide by the terms of the bail.

6 Learned APP has strongly opposed the application and supported the reasons given by the learned Special Judge while rejecting the anticipatory bail of the appellant. Statements of the witnesses have been recorded and especially, the relatives of the prosecutrix are supporting the prosecution story. The statement of prosecutrix under Section 161 of the Code of Criminal Procedure gives details as to how the promises were made by the appellant, who was, in fact, already married and could not have married the prosecutrix; yet kept the physical relations. There is criminal history of the appellant and taking into consideration the said criminal history, possibility of tampering with the evidence of the

prosecution cannot be ruled out.

7 Learned Advocate appearing for the respondent No.2 submitted that the affidavit-in-reply has been given by respondent No.2 and she has strong opposition for grant of bail to the appellant. The appellant is politically sound, his wife is Councillor of Kaij Municipal Council and his mother is member of Panchayat Samiti. He is influential person and there is terror in the vicinity of Kaij and other places of the appellant. The appellant is sexually exploiting her since last 2½ years. Her First Information Report, supplementary statement and statement under Section 164 of the Code of Criminal Procedure would show the picture as to how she has been sexually exploited. Initially proper sections were not applied and, therefore, with the agitation with the Police in view of the fact that the pregnancy of the prosecutrix was illegally terminated on two occasions, offence under Section 313 of the Indian Penal Code has not been added. The custodial interrogation of the appellant is necessary as he had taken away the mobile phone of the prosecutrix. The investigating agency is not completing the investigation in proper direction and it can be seen from the fact that appellant came in contact with prosecutrix when it was informed to him that he should mediate between the prosecutrix and her husband for resolving that dispute. The appellant has taken disadvantage of the situation in which the prosecutrix was and false statement that has been made that there was love affair between the both. The prosecutrix being a member of Scheduled Castes, needs to be protected.

8 At the outset, it is to be noted that the offence under which initially the First Information Report was registered was also serious and it appears that Section 313 of the Indian Penal Code has been later on added. Now, the offence stand registered for the offence punishable under Section 376(2)(n), 313, 327, 143, 149, 323, 506 of the Indian Penal Code against the present appellant and co-accused as well as under Sections 3(2)(v), 3(2)(va), 3(1)(r) and 3(1)(s) of the Atrocities Act. However, still it can be seen from the contents of the First Information Report as well as the investigation papers, in which the First Information Report appears to be supported by the statements of her parents that the mobile phones were stolen/taken away forcibly by the appellant and as regards the allegation about deletion of data, no section has been invoked by the Investigating Officer, who appears to be Additional Superintendent of Police of Kaij Division of Beed District. Definitely, if we consider the First Information Report as it is, Section 379 of the Indian Penal Code as well as other sections under the Information Technology Act can be attracted.

9 Now, it is on record that the prosecutrix is major, married lady. It does not per se allow inference that she would be the consenting party, if there is long duration of the alleged relationship. We are also required to see how and under which manner the consent was obtained. As per the allegations in the First Information Report and the other evidence on record in the form of statements, it has been stated that prosecutrix and her parents went to the appellant for

getting redressal of the dispute between the prosecutrix and her husband and after the appellant was given the history, it is then stated that he was insisting that the prosecutrix should meet him. In her First Information Report she had specifically stated that she was abducted on 08.12.2021 in a white car from Tambva Bus Stand by the appellant. Now, there is no addition of section for abduction added to the First Information Report. She then states that she was directly taken to hotel at Kaij and sexual intercourse was done by the appellant without her consent. Thereafter it appears that since that date for two years by giving promise to marry the appellant has committed sexual intercourse with her in hotel at Kaij. Photograph has been given across the bar showing that they both have exchanged garland and learned Advocate for the appellant submitted that marriage has been performed. In fact, it is surprising that such statement has been made on behalf of the appellant. Such kind of marriage cannot be said to be a marriage in the eyes of law. It does not give any right to the appellant in any manner. Interestingly, there is also a statement of a witness viz. Machchhindra Rama Chate under Section 161 as well as under Section 164 of the Code of Criminal Procedure as well as statement of one Dattatraya Ashokrao Tambvekar @ Kiran Ashokrao Kulkarni. Interestingly, this Dattatraya @ Kiran is the priest, who has stated that he caused the marriage between the appellant and the prosecutrix to take place on 26.06.2022. It cannot be the job of the priest/Brahman to help a person to have illegal marriage. It appears that he was knowing the appellant earlier and definitely, it can be said that he might be having knowledge about the earlier marriage of the appellant. Without any knowledge if he is indulging himself in such act and helping the appellant in performing illegal marriage, then, definitely, it would be the further course for the Investigating Officer to take appropriate action.

10 Further, there appears to be evidence in the form of abortion/termination of pregnancy of the prosecutrix and she has given her name as the wife of the appellant. By pointing out this, the learned Advocate for the appellant submits that even when the prosecutrix had accepted the marriage and was posing herself to be the wife of the appellant, then, how she can level allegations about rape on the husband ? Here, also intention is necessary to be considered. Possibility of fear of defame prompting her to use the name of the appellant cannot be ruled out and also if the appellant is accepting that he has performed marriage, then, why he is not making it public. He cannot hide the same and if we consider along with this the First Information Report that has been lodged by the wife of the appellant on 27.06.2022 vide Crime No.262/2022 with same Police Station under Section 384, 385, 388, 389 of the Indian Penal Code, then, it would reveal that the wife of the appellant is unaware about the alleged marriage between the prosecutrix and her husband i.e. present appellant and she says that it was the prosecutrix who had made advancements towards the appellant and then thereafter she started insisting that appellant should provide money to her and then started extorting the amount. She had also then stated that she would lodge the false case of sexual harassment. The interesting point

to be noted is that the present First Information Report vide Crime No.261/2022 has been registered at 21.34 hours on 27.06.2022 and the First Information Report which is lodged against the prosecutrix by the wife of the appellant has been registered at 22.47 hours on the same day. How the wife of the appellant came to know about the lodging of the First Information Report by the respondent No.2, is a question and unless there would have been help from the Police Station it could not have taken place.

11 Another fact to be noted is that the wife as well as mother of the appellant appeared to be elected members and even the appellant appears to be a political leader. Further, it appears that since 1997 there were 16 offences, including the present one, registered against the appellant. When asked about the same, the learned Advocate for the appellant says that since the appellant is a political figure, he has been involved in politically motivated offences. It is to be noted that some other offences were under Maharashtra Gambling Act. They cannot be said to be politically motivated. No doubt, along with a separate compilation the appellant has produced on record certain Judgments, in which either he has been acquitted or the proceedings have been stopped under Section 258 of the Code of Criminal Procedure. Interesting point to be noted is that though it appears to be an old case i.e. Summary Criminal Case No.1525/2002, which came to be closed under Section 258 of the Code of Criminal Procedure on 18.06.2010 by learned Judicial Magistrate First Class, Kaij. It has been stated that many times it was the case of under Section 188 of the Indian Penal Code. It was stated that many times non bailable warrant was issued against the appellant, however, report was also not filed and it has not been shown how influential the appellant is. Therefore, possibility of tampering with the evidence of the prosecution cannot be ruled out.

12 The evidence that has been collected so far shows involvement of the appellant and at the cost of repetition it will have to be observed that yet the police have not applied proper sections to the matter. When the investigation is still progressing we hope that the lacuna would be removed. We do not agree with the submission on behalf of the appellant that there was love affair between the prosecutrix and the appellant. Even if for the sake of argument we take that ingredients of Section 3(1)(r) or 3(1)(s) of the Atrocities Act are not attracted; yet, as regards ingredients of Section 3(2)(v) and 3(2)(va) of the Atrocities Act apparently get attracted, in view of the fact that the appellant was knowing the caste of prosecutrix and, therefore, the bail application under Section 438 of the Code of Criminal Procedure filed by the appellant was not maintainable, in view of bar under Section 18 of the Atrocities Act. The learned Special Judge was justified in rejecting the bail application of the present appellant. We do not find any illegality or error committed by the learned Special Judge. There is no merit in the present appeal. It deserves to be rejected. Accordingly, it is rejected.