

(2018) 06 MP CK 0001

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.4110 Of 2018

Vijay Dhingra

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 04-06-2018

Acts Referred:

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3(2)(v), 14A, 14A(2)
Code Of Criminal Procedure, 1973 — Section 164, 439
Indian Penal Code, 1860 — Section 376, 468, 506

Citation : (2018) 06 MP CK 0001

Hon'ble Judges : ASHOK KUMAR JOSHI, J

Bench : Single Bench

Advocate : Amit Sharma, Rajesh Shukla, J.M. Sahani, Anshu Gupta

Final Decision : Allowed

Judgement

This alleged first Criminal Appeal filed under Section 14-A(2) of SC/ST (Prevention of Atrocities) Act (in short "Act") on behalf of appellant

against the order dated 25.05.2018 passed by Special Judge (SC & ST Act), Gwalior, whereby regular bail application filed under Section 439 of the

Cr.P.C. on behalf of present appellant was dismissed, is listed for admission and for consideration of I.A. No.4216/2018 filed on behalf of appellant for

early hearing of criminal appeal and I.A. No.4215/2018 filed on behalf of appellant for hearing of this criminal appeal during summer vacation.

Today, I.A. No.4438/2018 has been filed by Shri Anshu Gupta, counsel on behalf of respondent No.2 for permitting her counsel to assist the Public

Prosecutor along with Vakalatnama bearing thumb impression of respondent No.2.

Appearing counsel for the parties heard on I.A. No.4438/2018. In view of the

reasons mentioned in the application, I.A. No.4438/2018 is allowed and counsel for the respondent No.2 is permitted to assist the learned Public Prosecutor.

Learned Public Prosecutor appearing on behalf of respondent No.1/State intimates that the relating case diary of crime No.395/2018 registered at police station Bahodapur, Gwalior in reference to offence punishable under Sections 458, 376, 506 of IPC and Section 3(2)(v) of the Act is available; hence, with consent of appearing counsel for the parties, arguments were heard finally. Produced case diary and other documents are perused.

According to prosecution's version, about 25 years' old married respondent No.2/complainant/prosecutrix lodged FIR in the intervening night of 19-

20th May of 2018 at 00:25 hours at Police Station Bahodapur to the effect that on 19.05.2018 at 22:30 hours, when she was alone with her minor child

in tenanted house of Parshuram Singh Tomar at Bahodapur, then after knocking the door, appellant Vijay Dhingra having a pistol in his hand entered

into her house and took her into room and after lying herself on her bed and after showing his pistol and threatening her that he would kill her and her

minor son Montu, appellant committed rape with her. At the same time, her husband came back to the house with Raju, then appellant after

threatening her husband fled away. On the FIR lodged by the prosecutrix, crime No.395/2018 was registered and respondent No.2/prosecutrix was

sent for medical examination and appellant was arrested on 22.05.2018 and a pistol with its license was seized from appellant vide seizure memo

prepared on 22.05.2018.

Present appellant filed regular bail application under Section 439 of Cr.P.C. before Special Judge (SC & ST Act) Gwalior, which was dismissed by

impugned order dated 25.05.2018. Hence, this criminal appeal has been filed.

It has been contended by the learned counsel for the appellant that appellant has been falsely implicated in the crime as it is clear from the FIR that

prosecutrix reached for lodging FIR against the appellant to police station with some contractors and the story of committing rape in the night at 10:30

pm is totally unbelievable and unnatural and prosecutrix in her statement recorded by JMFC Gwalior under Section 164 of Cr.P.C has stated nothing

against the present appellant and has not stated anything regarding rape and before Special Court, she filed an application that she is having no

objection in granting bail to the present appellant but the concerned Special Judge erred in dismissing the present appellant's regular bail application. It

is further submitted by the appellant by placing reliance on the photocopies of treatment of the appellant that he is a heart patient and completion of the

investigation and thereafter trial will take sufficient time in its conclusion. Hence, it is prayed that his appeal be allowed and impugned order dismissing

his bail application be set aside and he be ordered to be released on regular bail.

Per contra, learned Public Prosecutor appearing on behalf of respondent No.1/ State strongly opposed the appeal filed by the appellant but it has been

fairly admitted by the appearing Public Prosecutrix that respondent No.2/ prosecutrix has not deposed anything against the present appellant in her

statement recorded under Section 164 of Cr.P.C by the concerned JMFC, Gwalior, whose copy is enclosed in the case diary.

Appearing counsel for the respondent No.2 is having no objection if appellant's appeal is allowed.

Considered the rival contentions raised on behalf of learned counsel for the parties. It is clear from the FIR, that alleged rape was committed at about

10:30 pm, where respondent No.2 was alone in her house with her minor child. According to her MLC report, no injury was found on her body and

private part. Present appellant was arrested on 22.05.2018, but the major and married respondent No.2 has stated nothing against the appellant or

regarding rape in her statement recorded under Section 164 of Cr.P.C. by the concerned JMFC, Gwalior.

It is clear from the impugned order passed by Special Judge (SC & ST Act) Gwalior that before Special Court, it was expressed by prosecutrix's

counsel that prosecutrix is having no objection, if bail application of present appellant is accepted and it also appears from the impugned order that

prosecutrix had appeared before the Special Court with her counsel.

In view of the above facts and circumstances of the case and looking to the facts that the completion of investigation and thereafter trial will take

sufficient time and in view of the statements of the prosecutrix recorded under Section 164 of Cr.P.C, it appears that appellant's appeal is worthy of

acceptance. Consequently, appeal filed by the appellant under Section 14-A of SC & ST Act is allowed and the impugned order dated 25.05.2018

passed by Special Judge (SC & ST Act) Gwalior is set aside and it is ordered in

relation to his bail application that the appellant be released on regular bail on his furnishing personal bond in the sum of Rs. 70,000/- (Rupees seventy thousand Only) with one solvent surety in the like amount to the satisfaction of the CJM, Gwalior for appellant's regular appearance before the Court concerned with following conditions:-

1. The appellant will comply with all the terms and conditions of the bond executed by him;
2. The appellant will cooperate in the investigation/trial, as the case may be;
3. The appellant will not indulge himself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court.
4. The appellant shall not commit an offence similar to the offence of which he is accused;
5. The appellant will not seek unnecessary adjournments during the trial; and
6. The appellant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.

A copy of this order be sent to the Court concerned for compliance.

C.c. as per rules.