

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.106 of 2023

Vijay Sitaram Kate]	..	Appellant
vs.			
State of Maharashtra & Anr.]	..	Respondents

Mr.Aniket Vagal for the Appellant.

Ms.P.N. Dabholkar, APP for the State.

Mr.Ajinkya Udane for Respondent No.2.

CORAM : BHARATI DANGRE, J

DATE : 18th April, 2023

P.C.

1] The Appellant is aggrieved by the rejection of his Bail Application, at the hands of the Additional Sessions Judge, Khed on 13.01.2023, in connection with CR No.345/2022, which invoke offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as well as offence under Section 504, 506, 509 read with 34 of the Indian Penal Code.

2] Heard the learned counsel Mr. Aniket Vagal for the Appellant and Ms.P.N. Dabholkar, the learned APP for the State.

Mr.Ajinkya Udane is appointed through legal aid to represent Respondent No.2.

3] On the last date of hearing when the Appeal was being heard, the learned APP specifically raised an objection about the antecedents of the Appellant and she would lay her emphasis on an earlier CR being CR No.55/2022, in which charge-sheet has been filed and also 5 other offences which reflect his criminal antecedents.

Mr.Vagal, the learned counsel for the Appellant would argue that, as far as two offences are concerned, there is closure and therefore, they cannot be taken into account as his antecedents and in respect of CR No.55/2022, he would submit that summary was filed earlier and an Affidavit to that effect was tendered before this Court by the Superintendent of Police, Ratnagiri, offering justification for wrongfully mentioning the A summary report, but later on with the permission of the court, the summary was withdrawn as not pressed and the investigation was complete and the charge sheet is filed.

4] I have extensively heard the respective counsel and have tracked sequence of events in the present Appeal.

The Appellant was arraigned as Accused in CR No.55/2022 registered with Mandangad Police Station, which invoked offence under Section 376, 354(A), 354(C), 504, 506, 509, 323 and Section 66(e) of the Information Technology Act and Section 3(1)(w-1) (w-2) and 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

The said CR came to be registered on the complaint filed by the Prosecutrix, where she alleged that she was subjected to forcible sexual intercourse by the Appellant and the period of occurrence of the offence was stated to be 25.05.2018 to 08.09.2021. The FIR came to be lodged on 07.08.2022 and the Prosecutrix alleged that the first incident of sexual assault upon her took place on 25.10.2020 when

forcible intercourse was committed with her and certain photographs/videos were recorded by the Appellant, so as to blackmail her. It is her case that her husband was working as a Driver, on the Tempo owned by the Appellant and he was not paid his salary.

5] In connection with the said CR, the Appellant filed Criminal Appeal No.901/2022, challenging the order refusing him protection from arrest and he was admitted to protection by this Court, on 20.09.2022. On 22.12.2022, this Court took note of the total non-application of mind by the concerned Police Officer/SHO, who had recorded the FIR as the provisions which were not in existence in the statute book were invoked to the subject crime and the Court derived an inference that relevant sections were not deliberately applied, so as to protect the Appellant/accused in the crime. Noting that the Appellant is highly influential person, capable of exercising substantial influence over the investigating agency, the interim relief granted on the earlier date, came to be withdrawn.

The Court also took note of the fresh CR being registered against the Appellant and, therefore, directed the Superintendent of Police, Ratnagiri to provide round the clock protection to the victim and her husband until further orders are passed by this Court.

6] Investigation being complete, A summary report was filed before the Competent Court and on 15.12.2022, the Court was taken for surprise by such a step and it directed the Superintendent of Police to file his personal Affidavit, after perusing the record of CR No.55/2022. It was specifically expressed that the investigating officer has once again committed mischief and has shown courage to file 'A' summary report and it is all because the appellant is an influential person.

7] Pursuant to this direction, Superintendent of Police Mr. Dhananjay Kulkarni filed an Affidavit before this court and tendered his apology for inadvertently, mentioning summary report in category 'A' and there was no intention to conclude the proceedings as 'A' summary, but the Officer has prayed for continuation of the investigation while narrating the circumstances, which were revealed during the course of investigation. The Affidavit narrate the material collected by the prosecution while investigating CR No.55/2022, registered with Mandangad Police Station, on the complaint filed by the complainant, while she was residing with her husband and children in the room on the terrace of the Appellant's house.

The Affidavit proceed to state that the investigation revealed that the husband of the complainant was employed by the Appellant as a driver and they were allowed to reside on the terrace of the Appellant's house. On registration of the offence on 07.08.2022, she was referred for medical examination, which do not show injuries on her body.

It was stated that the statements of six witnesses came to be recorded i.e. husband of the complainant, uncle of the complainant and three specific statements of Dinesh Zore, GajanaTambulkar and Mahesh Mahajan.

The affidavit proceed to state that the three witnesses mentioned that the accused was accompanying them at Pachora, District-Jalgaon, on the day of incident i.e. on 25.10.2020, and also as per bank statement of the Appellant, he has filled petrol at Pachora though his ATM card during his Pachora visit, on the occasion of performance of last rites of the mother of witness Mahesh Mahajan. The Superintendent of Police in his Affidavit prayed for withdrawal of the inadvertent mentioning of 'A' summary report and requested the investigation to be continued.

8] Criminal Appeal No.901/2022 was disposed on 11.01.2023, when it was submitted before the Court that the Superintendent of Police, Ratnagiri has transferred investigation of the crime to a new Investigating Officer, in the wake of the observations recorded in the order dated 22.12.2022 and statement of the victim being recorded, the Appellant has been arrested on 03.01.2023 and therefore, the Appeal has become infructuous.

9] On registration of the second CR, the Appellant filed a Writ Petition being registered as Writ Petition (S) No.73 of 2023 and Division Bench of this court on 01.02.2023 referred to the Affidavit of Superintendent of Police filed in Criminal Appeal No.901/2022 and by taking the same on record, copy was directed to be supplied to the learned APP, who was asked to go through the Affidavit to take appropriate steps. In the meantime, a specific direction was issued that the investigation shall continue, but charge-sheet shall not be filed in the case, without the leave of the Court. This order continue to remain in operation in the said Writ Petition.

10] In the Appeal before me, accusation faced by the Appellant are to the effect that while the Prosecutrix had gone to the office of Advocate Metkar on 10.10.2022 to obtain necessary information about her case as she has heard that summary proceedings are filed and she was accompanied by her husband, one vehicle suddenly crossed her way and she noticed that the Appellant was sitting at the driver seat and he being accompanied by Accused No.2. At that time, in presence of one Seema Jadhav, and other persons, he abused her by referring to her tribe, in abusive language and threatened her. It is alleged that Accused no.2 also abused her. This created a feeling of fear in her

mind and therefore, on 16.12.2022 she approached Khed Police Station and lodged report, which resulted in invocation of Section 3(10) and 3(11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

11] During the investigation of the subject CR, statement of the complainant and her husband came to be recorded.

The statement of independent witness Seema Jadhav is also recorded under Section 164 of the Cr.PC, who has corroborated the prosecution case by stating that she was present in the office of Advocate Metkar and at around 12.00 to 12.30 p.m., when she was present at xerox centre, she would hear commotion and witnessed the incident of abuses being hurled at a woman, who was later revealed to her, to be the Prosecutrix. She stated that she had accompanied the said woman to the Police Station.

The veracity of the said statement, will have to be tested at the time of trial, as according to the prosecution, the Prosecutrix approached the Police Station only on 16.12.2022 and she did not go to the police Station on the date of incident. In any case, this inconsistency can only be tested during the course of trial. As far as present case is concerned, investigation is complete and charge-sheet is filed.

The charge sheet is also filed in CR No.55/2022 and by taking cognizance, process has been issued against the Appellant.

12] No doubt, the offence is serious in nature and the Appellant shall face the charges levelled in both the charge-sheets, however, the question is, whether he deserve to be remain incarcerated pending the trial in the two CRs. Though the learned APP heavily rely upon the

antecedents, which include CR No.55/2022, which is pending for trial and it is to be noted that other offences are under the Indian Forest Act as well as some prohibitory actions.

In two offences registered in the year 2008 and 2016 with Bhosari and Mulund police Station respectively the Appellant is already acquitted. In CR No.131/2021, which is registered under the Maharashtra Gambling Act, Mr. Vagal would submit that he has specifically taken a stand that he is not the same person, who had pleaded guilty.

13] In any case, the aforesaid offence do not justify his incarceration, awaiting trial and the safety of the Prosecutrix can be taken care of by passing appropriate directions to that effect, as investigation is now complete and charge-sheet is already filed, and the trial may take its own time.

14] However, it is informed by the learned APP that the Prosecutrix has relocated from Mandangad and is presently residing in Pune.

However, for the purpose of attending the trial in Khed, whenever the prosecution is required to put her appearance, in-charge of Khed Police Station shall ensure protection to her, by deputing a Police Officer not below the rank of Head Constable, at the time on her visit to Khed.

Hence, the following order :-

ORDER

- (a) Appeal is allowed.
- (b) Appellant – Vijay Sitaram Kate shall be released on bail in connection with C.R.No.345 of 2022 registered with Khed Police Station on furnishing P.R. bond to the extent of

Rs.50,000/- with one or more sureties of the like amount.

(c) The Appellant shall mark his attendance with Khed Police Station on first Monday of every trimester between 03.00 p.m. to 05.00 p.m.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) The Appellant shall not visit Pune, where the Prosecutrix is presently residing.

(f) The Appellant shall regularly attend trial, on every date, unless exempted.

[BHARATI DANGRE, J]