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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 817 OF 2020

Suraj S. Paithankar

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

Mr. Abhijeet A. Desai a/w Mr. Amol Jagtap i/b Desai Legal for
the Applicant

Mr. S. V. Gavand APP for the State

CORAM : BHARATI DANGRE, J.

DATE : 3rd JULY 2020.

P.C.

On 19/06/2020, this Court (Coram: Sarang Kotwal, J.) recorded an objection raised by the APP that since the offence alleged is under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, (Hereinafter referred to as 'Act of 1989' for the sake of brevity) an appeal would be required to be preferred under Section 14(A) of the Act of

1989. For consideration of the said objection, matter was subsequently listed and Mr. Desai, learned counsel for the Applicant has placed on record following judgments:

- 1. *In Re the Registrar (Judicial High Court)*
[Madras High Court]**
- 2. *Rinku Vs. State of U. P. (Allahabad High Court)***
- 3. *Sarwan Singh Vs. Kasturilal (A.I.R. 1977 Supreme Court 265)***
- 4. *Guddu Kumar Yadav Vs. State of Bihar (Patna High Court)***

2 The judgments relied upon by Mr. Desai which are delivered by the Allahabad High Court, Madras High Court clearly lay down a position of law to the effect that Protection of Children from Sexual Offences Act, 2012 (Hereinafter referred to as 'POCSO Act' for the sake of brevity) being a special enactment and also a subsequent enactment and

containing non obstante clause, the bar created under Section 14 (A) of the Act of 1989 would not operate. I have perused the aforesaid Judgments and I am in agreement with the ratio laid down in the aforesaid Judgments.

Protection of Children from Sexual Offences Act, 2012 being a special enactment which deal with the offences of child abuse, was brought into force w.e.f. 14/11/2012. It is a comprehensive legislation which provides for protection of children from offences of sexual assault, sexual harassment and pornography, by safeguarding the interest of the child at every stage of judicial process by incorporating child friendly mechanism for reporting, recording of evidence, investigation and conduct of speedy trial of offences through designated courts. It ensures child friendly judicial process and involves multidimensional approach keeping in view the child's right. In a case where the child subjected to abuse happened to be belonging to Scheduled Caste and Scheduled Tribe, the procedure carved out in the Act of 2012 would not take away

the powers of the Special Court to try the offences under the said Act coupled with a provision contained in Section 42(A) which was introduced by Act No. XIII of 2013 which introduced a provision that the Act and its provisions shall be in addition to and not in derogation of provisions of any other law for the time being in force and in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of inconsistency. Insertion of provision of Section 42A in the POCSO Act, make the position of law amply clear and the objection raised by the learned APP therefore do not warrant any merit. Going a step further, in accordance with Section 31 of the POCSO Act which make provisions of Code of Criminal Procedure, (Hereinafter referred to as 'Cr.P.C.' for the sake of brevity) applicable to the proceedings before the Special Court trying offences under the said Act, provisions of Appeal contained in the Cr.P.C. would be equally made applicable to the proceedings to the offences under the POCSO Act.

3 After scrutinizing the legal position and the Judgments relied by Mr. Desai and the learned APP who also fairly concedes to the position of law and has consented for proceeding to hear the matter on its merits.

4 Heard Shri. Abhijeet Desai, learned counsel for the Applicant and Shri. S. V. Gavand, learned APP for the State. Perused the charge-sheet placed on record. F.I.R. is lodged by mother of the victim as it discloses is filed by mother in relation to an incident which took place on 10/11/2019. Mother has mentioned age of her daughter on the date of incident as of 16 years and 6 months, but on the basis of birth certificate which is placed on record and form part of the charge-sheet, the date of birth of the victim girl is 18/06/2004; on the date of incident her age is precisely 15 years 4 months and 23 days. Going by the version of prosecution case, the victim was in friendly relationship with

the Applicant and on the date of incident, she accompanied him on his motorcycle and travelled to a place approximately 40-45 Kms from Pune where she alongwith the Applicant had access to a lodge where they were there for almost 1½ to 2 hours as per the receptionist of the concerned lodge whose statement forms part of the charge-sheet. CCTV footage of their entry and exit from the lodge is also part of the charge-sheet.

5 Mr. Desai, learned counsel for the Applicant would submit that the Applicant is 21 years of age and he was in friendly relationship with the victim and it is not the case that he had forced himself upon her. In any case, taking into consideration the fact that the age on the date of incident, victim was 15 years 4 months and 23 days, the offence with which Applicant is charged is undisputedly attracted. The issue as to whether physical relationship was established on account of promise of marriage is to be determined at the

time of trial. Undisputedly the fact that victim was minor and attracted provisions of Section 376 of Indian Penal Code and her consent is totally immaterial.

6 This being a settled position of law, the only aspect which arises for consideration is whether Applicant is entitled for bail at this stage. Applicant came to be arrested on the date of which F.I.R. was lodged i.e. on 12/11/2019 and since then he is in custody. Investigation is completed, charge-sheet is filed. On consideration of matter on merit, there is no prohibition that the Applicant cannot be released on bail though he may be convicted on the basis of evidence brought on record. Once the investigation is completed and charge-sheet is filed, what is to be ensured is that the Applicant do not tamper with the prosecution evidence and and make himself available for trial. The victim being of tender age also needs to be kept away from the Applicant as she may not feel free to depose if she comes in contact with the Applicant.

This can be ensured by taking an undertaking from the Applicant that he will not enter into jurisdiction of Pune City since the victim is resident of Dhanori, Pune. On this suggestion, Mr. Desai is acceptable to the fact that the Applicant would not enter the jurisdiction of Pune city till the conclusion of trial. Similarly Mr. Desai also submits that all directions would be complied by the Applicant which would ensure his attendance at the time of trial.

7 As far as the allegations under the Atrocities Act of 1989 is concerned, except in a statement of the victim girl recorded under section 164 of Cr.P.C., where she has disclosed that Applicant abused her by mentioning her caste, there is no other material to attract the offences under the said Act. The effect of the statement under Section 164 of Cr.P.C. and the content therein and its appreciation would be done at the time of trial. It is not the case of the prosecution that the Applicant was aware that the victim girl belongs to scheduled

caste and therefore intentionally he assaulted her sexually, being conscious of this fact. Therefore, perusal of the material in the charge-sheet do not prima facie attract the provisions contained in Act of 1989.

8 Considering the aforesaid facts, I am inclined to release the Applicant on bail subject to following conditions.

ORDER

(a) Applicant is directed to be released on bail in connection with 370 of 2019 registered with Vishrantwadi Police Station, Pune, on furnishing P. R. bond of Rs. 25,000/- and on executing one or two sureties of the like amount.

(b) He 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 or tamper with evidence.

(c) The Applicant shall not enter into jurisdiction of Pune City during the pendency of trial.

(d) On his release, the Applicant would report to the Investigating Officer of Vishrantwadi Police Station, Pune about his place of stay i.e. address, telephone number within period of one week.

(e) The place which he chooses as the place of his residence while he is on bail, he would report to the concerned police station of that area, once in a month and mark his presence.

9 The Application is allowed in the aforesaid terms.

SMT. BHARATI DANGRE, J.