

## **Supreme Court on Gender Sensitization**

Criminal Appeal No. 329 of 2021

Judgment date 18.3.21

Aparna Bhat Vs. State of Madhya Pradesh

Victim (Aparna Bhat) was sexually harassed on 20/04/2020 and accordingly a police complaint came to be filed under Sections 452, 354A (3), 323 and 506 of IPC. Therefore, the accused filed an application under Section 438 of Code of Criminal Procedure, 1973 for anticipatory bail in connection with the FIR. The High Court, even while granting bail to the applicant/accused imposed a condition that the accused shall visit the house of the complainant with a box of sweets to tie Rakhi band and to promise to protect her to the best of his ability.

Various decisions and orders wherein such observations made by the judges in offence against women under POCSO Act and in offences relating to rape and sexual assault. The idea of compromise especially in the form of marriage between the accused and the prosecutrix is abhorrent and should not be considered as judicial remedy, as it would be antithetical to the woman's honour and dignity.

State of M.P v. Madanlal, (2015) 7 SCC 681

Ramphal v. State of Haryana [7]

Samuvel v. Inspector of Police [11]

Gyanaranjan Behera v. State of Odisha, [13] Orissa High Court

In the above cases, it is observed that the Court took note of the compromise between the survivor and accused, granted bail on the plea that an agreement to marry had been reached between the accused and prosecutrix. Additionally, while adjudicating matters of sexual harassment and rape, judges have made shocking remarks on the character of the prosecutrix.

A case of rape, where the prosecutrix was a minor and had become a mother of a child as a consequence of rape, because the accused agreed to marry her. It is urged that no observation should be made which initiates or encourages compromise that disparages and downgrades an otherwise heinous crime thus indicating that such offences are remediable by way of a compromise/by marriage.

In a POCSO case it was granted interim bail to the accused for the purpose of marrying the prosecutrix. In a POCSO and rape cases, no observation should be made, which takes note of the fact that the survivor has attained majority and that the accused has offered to marry her. It is urged that no observation should be made which initiates or encourages compromise that disparages and downgrades that such offences are remediable by way of a compromise/by marriage.

No observation/conditions should be made which grants bail on the ground that the victim is of loose character or is habituated to sexual intercourse.

Imposing conditions like rendering community service in COVID hospitals or in any other institution, plantation of trees, contributing to any charity relief fund is impermissible in law.

The use of gender-based stereotypes while deciding case pertaining to sexual offence are discrete. If Judges falter, especially in gender related crimes, they imperil fairness and inflict great cruelty in the casual blindness to the despair of the survivors.

The Court while deciding a bail application should not assume the role of a social reformer or fund raiser for charities and impose conditions which have no nexus with the offence or relevance with the object of the bail provisions.

Diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status orientation, social and economic status and others.

It is necessary to re-examine the existing doctrines which reflect the cultural and social limitation that have preserved dominant male interests at the expense of woman and children.

There are some conditions to be considered while granting the bail, it should not permit to contact the accused and the victim, it must seek to protect the complainant from any harassment by the accused, the complainant must be heard if any peculiar circumstance is required for additional conditions for her protection, the complainant should be informed immediately of the bail granted to the accused, bail conditions should be free from stereotypical or patriarchal notions on women.

The bail conditions in the judgement extracted from above are set aside and expunged from the record.

All the High Courts and trial Courts be directed to refrain from making observations and imposing conditions in rape and sexual assault cases, Courts should refrain from imposing irrelevant, freaky or illegal bail conditions.

Scope of such conditions are:

- A. Bail should not mandate or even permit contact between the accused and the victim.
- B. Where circumstance exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim.
- C. Where considered necessary, the complainant/prosecutrix may be heard on whether there is any peculiar circumstance which may require additional conditions for her protection.
- D. Bail conditions must be free from stereotypical or patriarchal notions on women and their place in society, and must strictly be in accordance with the requirements of the CrPC.
- E. The Courts while adjudicating a case, should not suggest or entertain any notions (or encourage any step) towards the compromise between the prosecutrix and the accused to get married, as it is beyond their powers and jurisdiction.
- F. In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days.
- G. Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments.

Judges specially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

The Attorney General made submission in which he suggested certain below mentioned steps that should be taken by all stakeholders, especially courts, while dealing with offences against women.

- Bail should not mandate or even permit contact between the accused and the victim.

- Bail conditions necessary, must seek to protect the complainant from any harassment by the accused.
- Where considered necessary, the complainant/prosecutrix may be heard on whether there is any peculiar circumstance which may require additional conditions for her protection.
- Wherever bail is granted, the complainant may immediately be informed that the accused has been granted bail.

He also asked to train judges to exercise their discretion and avoid the use of gender-based stereotypes while deciding cases pertaining to sexual offences and judges should have sensitivity to the concerns of the survivor of sexual offences.

The learned Attorney General also submitted that training for gender sensitization for judges at all levels of the judiciary should mandatorily be conducted at regular intervals by the National Judicial Academy and State Judicial Academies. It is also urged that courses on gender sensitization should be included in the curriculum of law schools, and the All-India Bar Exam should include questions on gender sensitization as well. In addition to this, he recommended that a detailed curriculum may be prepared with the help of subject matter experts by each High Court, to be a part of the syllabus for the Judicial Services Exams and training for inducted judges.

- Harsha J Hariyani, Advocate

Sejpal Associates, Advocate

Dt. 23/03/2021