

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5877 OF 2015

Ramling s/o Abhimal Ghule
Age 38 years, Occu: Agri
R/o Rui Taluka Washi
District Osmanabad

... Applicants.

VERSUS

1. The State of Maharashtra **... Respondent**
Through the Investigation Officer,
Washi Police Station,
Taluaka Washi, Dist. Osmanabad.

Mr.Mahesh Deshmukh Advocate h/f. Mr. N. B. Khandare
Advocate for the applicant.
Mr.P. N. Kutti, APP for the State.

CORAM : A. M. BADAR, J.

DATE : 6th November, 2015
(Vacation Court)

PER COURT :

1. This is an application under section 438 of the Criminal Procedure Code. Applicant/accused in Crime No.151/2015 registered with Washi Police Station, Taluaka Washi, Dist. Osmanabad for the offences punishable under Sections 354-A(1)(i) of the Indian Penal Code read with section 4 of Protection of Children From Sexual Offences Act, 2012 and under Sections 3(1)(x) and 3(2) of the Scheduled Caste and Scheduled Tribe (Prevention of

Atrocities) Act, 1989, is praying for pre-arrest bail.

2. Briefly stated allegations against applicant reflected in the First Information Report lodged by mother of the victim girl is to the following effect:

First Informant is resident of Rui, Taluka Washi, District Osmanabad. She is having two minor daughters. Offence is alleged to have been committed against her younger minor daughter. At the time of alleged offence she is stated to be 9 years old. Averments in the FIR reveal that alleged offence was committed on 07.09.2015. According to the prosecution case, on that day, at about 4.00 p.m., the victim girl was going for purchasing notebook. When she was crossing the house of applicant/accused, he called her and told her to purchase a sachet of tobacco (Goa pudi) for him from the shop of one Pandu Undre. The victim girl obliged and when she had been to the house of applicant/accused for handing over that sachet of tobacco, it is alleged that applicant took her inside the house, made her sat on his lap and pressed her breast.

3. According to prosecution case, victim girl belongs to Scheduled Caste "Mahar". Perusal of photocopy

of papers of investigation furnished by learned APP shows that during investigation, caste certificate of the informant is collected as well as map of the spot was drawn. Statement of the victim girl is recorded in question-answer form, wherein she had also stated that applicant made her to sit on his lap and pressed her breast.

4. So far as offence under Section 354-A of the Indian Penal Code i.e. sexual harassment is concerned, the said offence is bailable.

5. Offence under section 4 of the Protection of Children From Sexual Offence Act, 2012 is also levelled against applicant. Section 4 of the said Act deals with punishment for penetrative sexual assault. The prescribed punishment is not less than seven years but which may extend to imprisonment for life, apart from fine. Penetrative sexual assault is defined under section 3 of the said act, which reads thus:

"3. Penetrative sexual assault.-A person is said to commit "penetrative sexual assault" if

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes

the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

6. Averments in the FIR as well as statement of victim girl do not show that there was penetrative sexual assault on her by the present applicant. Careful scrutiny of the statement of victim would, at the most, lead to offence of sexual assault as defined under section 7 of the Protection of Children from Sexual Offences Act, 2012 and same is punishable under section 8 thereof with an imprisonment of not less than three years and which may extend to five years.

7. As it is alleged that the victim girl belongs to Schedule Caste "Mahar", offence punishable under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is also registered

against the present applicant. Section 3 (1)(x) reads thus:

"3. Punishments for offences of atrocities:-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled tribe,

(x)intentionally insults or intimidates with intent to humiliate a member of Scheduled Caste or a Scheduled Tribe in any place within public view;"

In order to attract penal provisions of this section, it needs to be shown that there was an intentional insults or intimidates with intent to humiliate a member of Scheduled Caste or a Scheduled Tribe in any place within public view. Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 creates a bar and provides that nothing of section 438 of the Criminal Procedure Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the said Act.

8. Mr. Deshmukh, learned counsel for the applicant placed reliance on the judgment of this Court (Nagpur Bench) in the case of **Ramchandra Govindrao Watkar and**

another Vs. State of Maharashtra, reported in 1995(2) Mh.L.J.669 and contended that, even if the FIR as well as entire papers of investigation are read as it is, then also it is not possible to conclude that the offence made against the applicant constitute any offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The question which was considered in the said reported ruling was to the effect that whether mere registration of offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 bars to the invocation of Section 438 of the Criminal Procedure Code. Part of para 10 of the said ruling can be noted with advantage and it reads thus:

"Thus, whenever it is pointed out by an accused/applicant in an offence registered under the Prevention of Atrocities Act to the Court while moving application for pre-arrest bail under section 438 of the Criminal Procedure Code, that the accusation made in the F.I.R. or allegations contained therein do not constitute any offence under the Prevention of Atrocities Act, it is the duty of the Court to examine and judicially scrutinize whether on its face, the first information report and the

material available in the case diary do constitute an offence under the Prevention of Atrocities Act."

9. Let us now examine whether accusation made in the FIR and found in the statement of victim girl constitute any offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in order to invoke bar of section 18 of the said Act.

At the cost of repetition, it needs to be mentioned that allegations against applicant are to the effect that when the victim girl had been to his house for handing over sachet of tobacco to him, the applicant took her inside the house, made her sat on his lap and pressed her breast. Papers of investigation do not reveal that merely because victim girl belongs to Scheduled Caste, she was subjected to such alleged sexual assault. Moreover, the incident in question is alleged to have happened inside the house of applicant, which cannot be said to be a place within public view. In this view of the matter, it cannot be said that photocopies of papers of investigation which are handed over to this Court by learned APP, even if read as a whole, would constitute offence punishable under section 3(1)(x) of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

10. According to the the applicant, he had suffered an accident and was admitted as indoor patient in the Hospital at Pune for a period from 17.06.2015 to 01.07.2015 and thereafter also he was attending the said hospital for follow up treatment. According to learned counsel for the applicant, on the day of alleged offence, applicant was taking treatment at Rakshak Hospital, Pune.

11. Though the learned APP submitted that the applicant is in habit of commission of such offence and he is absconding since the date of commission of offence, there is no iota of evidence found in the case diary furnished to this court to substantiate this contention. It is seen that even substantial part of investigation is already over and even statements of the informant as well as victim girl are recorded under section 164 of the Criminal Procedure Code.

12. While considering the prayer for grant of anticipatory bail, balance has to be stuck up between two factors, namely, no prejudice should be caused to the

free, fair and full investigation and at the same time, there should be prevention of harassment and humiliation to accused also. Considering the nature of allegations made against the present applicant as well as the fact that almost entire investigation is over, no fruitful purpose would be served by curtailing liberty of the applicant by asking him to undergo arrest. No impediment can be seen in order to deny relief of pre-arrest bail to the applicant in the instant case. Hence, the following order:-

O R D E R

- i. In the event of arrest of the Applicant in Crime No. 151/2015 registered with Washi Police Station, Taluaka Washi, Dist. Osmanabad for the offences punishable under Sections 354-A(1)(i) of the Indian Penal Code read with section 4 of Protection of Children From Sexual Offences Act, 2012 and under Sections 3(1)(x) and 3(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, the applicant be released on bail on his executing P.R. bond in the sum of Rs.5000/- (Rupees Five Thousand) and on furnishing surety in the like amount.
- ii. As a condition of this order, the applicant should attend the concerned Police Station twice in a week i.e. every Monday and Friday in between 12.00 noon

to 2.00 p.m. and he should cooperate in the investigation of crime in question.

- iii. The applicant shall not extend any threat, promise or inducement to the persons acquainted with the accusations against them so as to dissuade them from disclosing the same either to the Court or to the Police/Investigating Officer.
- iv. Criminal application disposed of.

(A. M. BADAR, J.)

JPC