

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 695 OF 2019

Akash s/o Shriram Pawar .Vs. State of Maharashtra, PSO, P.S. Malegaon,
Tq. Malegaon, Dist. Washim.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. V.K. Paliwal, Advocate for applicant.
Mr. N.R. Rode, A.P.P for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : NOVEMBER 13, 2019

Heard Mr. Paliwal, learned counsel for the applicant and Mr. Rode, learned Additional Public Prosecutor for the non applicant-State.

One Archana committed suicide inside her house on 18.08.2019 by hanging herself. One Sakharam Dhangare gave an intimation of unnatural death to Police Station, Malegaon on the same day resulting into registration of Accidental Death No.23/2019. Post mortem on the dead body was conducted. The cause of death was Asphyxia due to hanging.

On 16.09.2019 i.e. after a period of one month Ku. Laxmi, the elder sister of deceased Archana, lodged a report that Police Station, Malegaon. The investigator, on the basis of the said report, registered a crime against the applicant vide Crime No.323/2019 for the offence punishable under Section 305 of the Indian Penal Code.

The recitals of the report shows that deceased was taking her education in 11th standard at Tulsabai

Vidyalaya, Patur and she used to attend her school from village Devthana by traveling in a bus. She used to leave her house to attend the college in between 06:00 to 06:30 in the morning and used to return at 01:00 O'clock in the noon. The first information report shows that there is a well in village Devthana situated in front of house of one Shriram Motiram Pawar and the residents of the village used to fetch water from the said well. The report further shows that after returning from the college the deceased used to fetch water from the said well. The report states that on 05.08.2019 deceased disclosed to the first informant that prior to 2-3 days present applicant Akash caught hold her hand. The report shows that deceased revealed to the first informant that, that time she slapped the present applicant by means of her footwear. On getting this information, as per the first information report, the first informant approved her action. It is further stated in the report that on 18.08.2019 at 07:300 in the morning deceased disclosed Laxmi (first informant) that prior to 2-3 days present applicant followed her and asked her she should talk with him. It is also stated in the report that not only the deceased refused to talk with him but also she abused him. It is stated in the report that on 18.08.2019 in the evening at 06:00 O'clock when the first informant came to her house she noticed that Archana committed suicide by hanging herself. The report shows that since the present applicant troubled her, therefore, she has committed suicide.

Since the applicant was apprehending his arrest in connection with Crime No.323/2019 registered with

Police Station, Malegaon, Dist. Washim for an offence punishable under Section 305 of the Indian Penal Code, he preferred an application for anticipatory bail before the Court below. The said application was contested by the prosecution and the learned Additional Sessions Judge, Washim on 03.10.2019 rejected the said application.

After rejection of the anticipatory bail application the applicant approached to this Court immediately by filing the present application seeking relief of anticipatory bail on 10.10.2019. This Court on 11.10.2019 protected the applicant by granting ad interim protection on a condition that applicant shall attend the police station on specified dates and shall be with the investigating officer from 11:00 a.m. to 05:00 p.m.

According to the reply on 29.10.2019 i.e. after order of interim protection of this Court, the investigating officer has incorporated penal provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the said Act"). By filing reply before this Court now prosecution wants that application for anticipatory bail be rejected since it is not maintainable in view of the provisions of Section 18 of the said Act. I am afraid that the said submission has any merit in view of the factual scenario of the present case and in the light of the provisions of Section 3(1)(w)(i)(ii) of the said Act.

The learned Additional Public Prosecutor for the State has made available to me the entire investigation papers for my perusal. The reply filed on behalf of the prosecution is explicitly silent on the point that knowing full

well that deceased was belonging to tribe “*Andh*” which is a Scheduled Tribe, the applicant caught hold her hand and followed her. The investigation papers which are placed before me are totally silent in that behalf. Even the learned Additional Public Prosecutor for the State could not point out any material available with him on the said aspect. In that view of the matter and in the teeth of provisions of Section 3(1)(w)(i)&(ii) of the said Act, the bar under Section 18 of the said Act is not helpful to the prosecution.

After the order was passed by this Court on 11.10.2019 the applicant did attend the police station and has joined the investigation. The said factual aspect is also not denied by the learned Additional Public Prosecutor on the instructions received to him from the investigating officer.

The discussion as made, in my view, clearly shows that the bar under Section 18 of the said Act which tried to be pressed into service by the learned Additional Public Prosecutor, is not at all applicable nor that can be an impediment in granting the relief in favour of the applicant. Consequently, I pass following :

ORDER

- (i) The criminal application is allowed.
- (ii) In the event of arrest in connection with Crime No. 323/2019 registered with Police Station, Malegaon, Tq. Malegaon, Dist. Washim for an offence punishable under Sections 305, 305(D) of the Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act and under Section 3(1)(w)(i)&(ii) of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, applicant - Akash s/o Shriram Pawar, be released on bail on he executing P.R. Bond in the sum of Rs.15,000/- with one solvent surety in the like amount.

(iii) Applicant is directed to attend Police Station, Malegaon as and when required by the investigating officer. However, for that the investigating officer shall give clear cut three days prior written communication to the applicant.

(iv) With this the application is allowed and disposed of.

JUDGE

srwagh