

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

CRIMINAL APPEAL NO. 213/2019

Mohammad Ahemad Farjan Sheikh,
Aged about 27 years, Occ. Business,
R/o. Ghuggus Fail, Sardar Patel Ward,
Ballarpur, Tah. Ballarpur, Dist. Chandrapur

.... **APPELLANT**

// VERSUS //

- 1] State of Maharashtra,
Through P.S.O, Ballarpur,
Tah. Ballarpur, Dist. Chandrapur
- 2] Laxmi D/o. Dharamraj Keskar,
Aged about 23 years, Occ. Service,
R/o. Ghuggus Fail, Sardar Patel Ward,
Ballarpur, Tah. Ballarpur, Dist. Chandrapur

.... **RESPONDENT(S)**

Shri M.V. Rai, Advocate for the appellant
Ms. Mayuri Deshmukh, APP for the respondent no.1

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.

DATED : 09/12/2020

ORAL JUDGMENT : (PER:- Z.A. HAQ, J.)

- 1] Heard Shri M.V. Rai, Advocate for the appellant and Ms. Mayuri Deshmukh, APP for the respondent no. 1 – State. None appears for the respondent no. 2, though served.

2] **ADMIT.**

3] Crime No. 233/2019 is registered against the appellant with the respondent no. 1 – Police Station for the offences punishable under Sections 354, 354A(i), 354D, 341, 363, 323 and 506 of the Indian Penal Code and Sections 3(1)(w)(i) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989"). Apprehending arrest, the appellant had moved an application under Section 438 of the Code of Criminal Procedure before the Sessions Court which is dismissed by the impugned order.

4] According to the respondent no. 2 – victim, she was knowing the appellant since she was studying in the school and in due course, love relationship developed between the appellant and the victim. It is also alleged by the victim that the appellant started troubling her and abusing her and hurled abuses on her caste also.

5] The prayer of the appellant for grant of pre-arrest bail is opposed mainly on the ground that Section 18 of the Act of 1989 bars exercise of the powers under Section 438 of the Code of Criminal Procedure. On merits, the learned APP submitted that the investigation is still in progress and custody of the appellant is required.

6] With the assistance of learned advocate for the appellant and learned APP, we have gone through the report lodged by the respondent no. 2 – victim and the reply filed by the respondent no. 1 – Investigating Agency.

7] We find that the accusations of hurling abuses amounting to offences punishable under Sections 3(1)(w)(i) and 3(2)(va) of the Act of 1989 are vague and it does not fulfill the ingredients necessary to constitute the offence under the Act of 1989, as alleged. Hence, the objection raised by the learned APP referring to Section 18 of the Act of 1989 is overruled.

8] The appellant is aged about 27 years and claims to be conducting business. The appellant has stated that any other crime is not registered against him. This Court, by the order dated 20/03/2019 has granted interim protection to the appellant directing that any coercive action should not be taken against him. The interim protection continuous till today. The respondent no. 2 – victim has not made any complaint on record of this appeal that the appellant has misused the protection granted by the order dated 20/03/2019. The respondent no. 1 – State has also not complained that the appellant has misused the protection granted to him and has avoided to co-operate in the investigation.

9] Considering the above facts, the following order is passed:-

- a) The impugned order is set aside.
- b) In the event of arrest in connection with Crime No. 233/2019 registered with the respondent no. 1 – Police Station, the appellant be released on bail on executing P.R. Bond for Rs. Twenty Thousand.
- c) The appellant shall co-operate with the Investigating Agency and shall attend the respondent no. 1 – Police Station as and when summoned.

The appeal is **allowed** in the above terms.

JUDGE

JUDGE