

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

**CRIMINAL APPEAL NO. 290/2020
(LDVC NO. 1372/2020)**

Mohd Rafique Hafiz Sheikh,
aged about 33 years, Occ. Business,
R/o. Ambezari Post Nadappa,
Tah. Jiwti, Dist. Chandrapur.

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station Nandappa (Pittiguda),
Chandrapur.
2. Anjali Ayyu Madavi,
R/o. Ambezari Post Nadappa,
Tah. Jiwti, Dist. Chadrapur.

.... RESPONDENTS

Shri M. N. Ali, Advocate for appellant,
Shri S. D. Shirpurkar, A. P. P. for respondent No. 1/State.
Shri P. H. Khobragade, Advocate for respondent No. 2.

CORAM : VINAY JOSHI, J.
DATED : 27.11.2020

JUDGMENT

Heard.

2. **Admit.** Considering the issue involved in the matter and by consent of the learned counsel present for the parties, appeal is taken up for final disposal.

3. The appellant had approached to the Special Court for grant of pre-arrest bail in Crime No. 12/2020 registered at Nandappa (Pittiguda) Police station, Chandrapur for the offence punishable under Sections 354, 504 read with Section 34 of the Indian Penal Code, Sections 3(2)(w)(i)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (short 'SC and ST Act'). The Special Court declined to grant pre-arrest protection vide its order dated 17.08.2020. The said order is under challenge in this appeal terms of Section 14A of the SC and ST Act.

4. The learned counsel for the appellant would submit that the essential ingredients to constitute the offence punishable under the provisions of SC and ST Act are not made out, therefore, bar under Section 18A of the SC and ST Act would not apply. It is argued that the appellant has supplied construction material to the informant's husband and to avoid payment, false report has been lodged. He had also filed report dated 29.04.2020 against informant with Tantamukti Kendra, hence to give counter check, this report has been belatedly

lodged. It is his submission that there is inordinate delay in lodgement of First Information Report which prima-facie creates doubt about the happening of the incident allege incident. On the other hand, learned counsel for the respondent No. 2 resisted the submission by stating that the appellant has intentionally insulted informant and thereby committed an offence with the person belonging to scheduled caste. The life of informant is under threats and therefore, appellant is not entitled for bail. The learned Additional Public Prosecutor also resisted appeal by filing reply-affidavit.

5. On 13.07.2020 informant lady lodged report with the Police about the initial incident allegedly occurred on 20.05.2017. It is alleged that the accused approached to informant and asked to maintain illicit relations as well as threatened her for said reason. Thereafter, in the year 2018 and in the year 2019, the appellant through some persons sent message to the informant for maintaining illicit relation. The whole reading of first information report discloses that apart from the initial incident dated 20.05.2017, there was no contact or interaction of appellant with the informant. There happens to be delay of more than two years from the first incident. There are no allegations that accused intentionally touches to the informant. The

copy of prior report lodged by appellant at Tantamukti Kendra has been produced. Having regard to all these facts, the question about truthfulness of the allegation would remain. Already interim protection has been granted to the appellant, for which there is no grievance about threatening or pressurizing witnesses. It is not a case to have custodial interrogation. In view of that the appellant has made out a case for grant of pre-arrest protection.

6. The appeal is allowed. Impugned order dated 17.08.2020 is hereby quashed and set aside.

7. Interim order dated 04.09.2020 is hereby made absolute on same terms and conditions except the condition of attending police station.

8. Appeal stands disposed of accordingly.

JUDGE

Gohane.