

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

CRIMINAL APPEAL NO. 398/2020

Dasharath S/o Macchindra Thakre,
Aged 32 years, Occ. Agriculturist,
R/o. Mirzapur, Tq. Malegaon &
Dist. Washim.

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
through Police Station,
Shripur, Tq. Malegaon
& Dist. Washim.
2. Vandana W/o. Raju Dabhade,
Aged 24 years, Occ. Household,
R/o. Mirzapur, Tq. Malegaon,
Dist. Washim

.... RESPONDENTS

Shri S. S. Deshpande, Advocate for Appellant.
Ms. M. Deshmukh, Addl. Public Prosecutor for respondent No.1
Shri M. V. Rai, Advocate for respondent No. 2.

CORAM : VINAY JOSHI, J.

DATED : 06.11.2020

JUDGMENT

Heard.

2. **Admit.**

3. Challenge in this appeal is to the rejection of pre-arrest bail by the Sessions Court in M.C.A. No. 323/2020 vide order dated 21.09.2020. The appellant has claim pre-arrest protection in connection with Crime No. 223/2020 relating to the offence punishable under Sections 354, 354-A of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act'). The Trial Court refused to exercise the discretion by contending that there are incriminating circumstances to show that the accused has intentionally insulted the victim to humiliate her in public view.

4. Shri Deshpande, learned counsel for the appellant would submit that bare perusal of First Information Report (FIR) does not make out the essential ingredients to constitute an offence under the provisions of the SC and ST Act. Specifically, he would submit that FIR must show the elementary requirements that the accused does not

belong to the SC or ST category and secondary he must have knowledge that the victim belongs to said category. It is his contention that in order to avoid payment of due amount of the husband of victim, false complaint has been lodged. He has filed affidavit to make a statement that no other offences are registered against him.

5. Learned Additional Public Prosecutor resisted application by filing reply – affidavit. Shri Rai, learned counsel for informant also reiterated that the applicant is influential person and his past record is not fair.

6. On 23.08.2020, victim – lady lodged report alleging that on earlier date while she was on the way, the applicant/accused accosted her, by catching her hands, asked sexual favour and dragged to some extent. True, the FIR shows that victim belongs to SC and ST category as well as the accused belongs to non SC or ST category. In order to attract the provisions of the SC and ST Act, the complaint on prima-facie basis must make out the applicability of the provisions of Act. The offence punishable under Sections 3(1)(w)(i), 3(1)(w)(ii) requires that it shall be within the knowledge of accused that the woman belongs to SC or ST category. Mere touching woman or use of

words of sexual nature in absence of knowledge about victim's caste would not attract the provisions of the SC and ST Act. The plain reading of FIR prima-facie, does not comply the said requirement.

7. Though there are allegations that accused has dragged victim, no supporting material in the nature of medical report has been filed. It is stated that the accused was habitual offender, however admittedly, no offence was registered against him. On the point statutory bar created under Section 18-A of the SC and ST Act, the learned counsel for the applicant by placing reliance on the decision of the Hon'ble Supreme Court in case of Priathvi Raj Chauhan Vs. Union of India and ors. in Writ Petition No. 1016/2018 decided on 10.02.2020 submitted that in absence of prima-facie case, the bar would not apply. There is no dispute about the said proposition of law propounded by Hon'ble Supreme Court. Having regard to the nature of accusation, nothing is to be seized from the accused. The element of pressurization can be removed by imposing certain conditions. Hence, following order:-

8. Appeal stands allowed.

9. Impugned order dated 21.09.2020 passed by the Additional Sessions Judge, Washim in M.C.A. No. 323/2020 is quashed and set aside.

10. In the event of arrest, the appellant – Dasharath S/o Macchindra Thakre be released on bail on his furnishing PR bond of Rs. 15,000/- with one surety in the like amount.

11. The appellant shall attend the concerned Police Station on every Monday between 10.00 a.m. to 12.00 noon till filing of the charge-sheet.

12. The appellant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE