

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

911 CRIMINAL APPEAL NO.325 OF 2021

Dr. Suhas s/o. Kishanrao Yadav,
Age 46 years, Occ. Doctor,
R/o. Ambajogai, Tq. Ambajogai,
Dist. Beed.

.. Appellant.

Versus

- 1] The State of Maharashtra
Through In-charge Police Inspector,
Ambajogai City Police Station,
Tq. Ambajogai, Dist. Beed.
- 2] Sau. Asmita w/o. Anil Ovhal
Age 25 years, Occ. Labour,
R/o. Milind Nagar, Ambajogai,
Tq. Ambajogai, Dist. Beed.

.. Respondents.

Mr. V.D. Sapkal, Senior Advocate h/f. Mr. Sandip R. Sapkal, Amarnath S.
Sakhare, and Ajit B. Chormal,
APP for respondent No.1 : Mr. S.N. Morampalle.
Advocate for respondent No.1 : Mr. Pratap B. Vikhe Patil

WITH CRIMINAL APPEAL/338/2021

Mahesh s/o. Baburao Male,
Age 25 years, Occ. Service,
R/o. Talegaon Ghat, Tq. Ambejogai,
Dist. Beed.

.. Appellant

Versus

- 1] The State of Maharashtra
Through In-charge Police Inspector,
Ambajogai City Police Station,
Tq. Ambajogai, Dist. Beed.
- 2] Sau. Asmita w/o. Anil Ovhal
Age 25 years, Occ. Labour,
R/o. Milind Nagar, Ambajogai,
Tq. Ambajogai, Dist. Beed.

.. Respondents.

Mr. S.J. Salunke, Advocate for the appellant
Mr. S.N. Morampalle, APP for respondent No.1.
Mr. P.B. Vikhe Patil, Advocate for respondent No.2

CORAM : MANGESH S. PATIL, J.

DATE : 15.07.2021.

ORAL JUDGMENT :-

1] These are the appeals under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter the Atrocities Act), being aggrieved and dissatisfied by the impugned order refusing anticipatory bail and regular bail to the respective appellants.

2] The FIR has been lodged by a nurse who was serving in the hospital of appellant Dr. Yadav on 15.5.2021 alleging that on 7.5.2021, appellant Mahesh, who happened to be her colleague in the hospital molested her by holding her hand. She also alleges that even Dr. Yadav, many a times asked her for sexual favours. With these allegation the investigation proceeded. The appellant Mahesh was arrested on 12.6.2021 and is in magisterial custody, who is now seeking a regular bail, whereas, Dr. Yadav apprehends that he would be arrested and is

seeking anticipatory bail.

3] The learned Senior Advocate - Mr. Sapkal for Dr. Yadav submits that the allegations as against him are put up belatedly without there being any explanation for the delayed disclosure. He would point out that the incident as regards molestation by appellant Mahesh is stated to have taken place on 7.5.2021. She filed FIR on 15.5.2021, after 8 days of the incident. Even her supplementary statement was recorded on the next day. Later her statement was recorded under Section 164 of Cr.PC. on 18 May 2021. In none of these statements, had she ever whispered about any attempt by Dr. Yadav to molest her, much less, asking for her sexual favours. He would further point out that in the CCTV footage of the hospital being run by Dr. Yadav, it was revealed that the victim had stolen some cash from the counter and had handed it over to appellant Mahesh. It is only after he had disclosed this in writing addressed to the Police Officer that the victim informant seems to have falsely implicated him as an after-thought. He is a Doctor of repute. He would be put to avoidable harassment if he is not protected. Accepting the allegations as it is, his custodial interrogation is not necessary. The offence under the Atrocities Act cannot be made out against him. There are no allegations attributing him with the knowledge of victim's caste, which is a pre-condition for constituting an offence under Section 3(1) (w) of the Atrocities Act and consequently, in view of the decision of the Supreme Court in the matter of *Prathviraj Chauhan vs. Union of India; (2020)4 SCC 727*, the bar under Sections 18 and 18A of the Atrocities Act would not come into play. He may be put to any condition and may be protected.

4] The learned Adocate Mr. Salunke for the appellant Mahesh

would submit that since he is claiming regular bail under Section 439 of Cr.PC, the question of bar contained under Sections 18 and 18A of the Atrocities Act would not come into play. The learned Advocate would further submit that accepting the allegations at their face value, his continuing in the custody is not warranted for completing the investigation. He has been in jail for more than a month which must have extended the Investigating Officer sufficient opportunity to complete the investigation. The FIR does not attribute him with knowledge of the victim's caste which is a necessary ingredient for constituting the offence punishable under Section 3(1)(w) of the Atrocities Act. Consequently, he may be granted bail.

5] The learned APP and the learned Advocate for the respondent/victim would oppose both the appeals. They would submit that at this juncture, no scrutiny of material be resorted to. The fact remains that the victim has specifically alleged about molestation against the appellant Mahesh and though belatedly, she has also alleged about the appellant Dr. Yadav having asked her for sexual favours. The aspect of delay may be left to be pondered upon by the trial court. At this juncture, there is enough material to reveal that the appellant Dr. Yadav, has committed an offence under the Atrocities Act and in view of the bar under Sections 18 and 18A of the Atrocities Act, he may not be granted anticipatory bail.

6] They would further submit that there is enough material against appellant Mahesh to show that he has molested the victim and is not entitled to bail.

7] I have carefully gone through the papers of the investigation.

8] Suffice for the purpose to observe that so far as Dr. Yadav and his request for anticipatory bail is concerned, the law is now well-settled by the Supreme Court as regards applicability of the provisions of Section 18 and 18A of the Atrocities Act in the case of ***Prathviraj Chauhan (supra)***. It is not that in every case anticipatory bail is to be refused whenever the offence is registered under the Atrocities Act. It depends upon the facts and circumstances and prima-facie material revealing the occurrence of some offence under the Act.

9] Bearing in mind such trite legal position, if one examines the matter in hand, as regards Dr.Yadav, it is quite apparent that the allegations against him have been levelled by the victim for the first time on 18.6.2021, when her second statement under Section 164 of Cr.PC. came to be recorded. Conspicuously, neither in the FIR dated 15 May 2021 nor in her supplementary statement recorded on the next day under Section 161 of Cr.PC. or in her first statement under Section 164 recorded on 18 May 2021, had she even whispered about any such demand of sexual favour by the appellant Dr. Yadav. Surprisingly, even in her second statement recorded under Section 164 of Cr.PC., she has conspicuously not disclosed anything as to what had prevented her from making all this disclosure at some earlier point of time. Even the papers of investigation do not demonstrate what could have been the reason for her to come out with such belated disclosure.

10] It is also important to note that even in the requisition letter addressed to the concerned Magistrate requesting for holding her examination under Section 164 of Cr.PC. on second occasion, the I.O. does not seem to have disclosed that the victim was already examined

under Section 164 of the Cr.P.C. on 18 May 2021 and what necessitated him to come out with another request for her examination.

11] In the backdrop of such state of affairs, it is important to go through statement of some of her colleagues from the same hospital. They in unison specifically state about the CCTV footage recovered on 15 May 2021 wherein the incident dated 14 May 2021 was recorded, showing that the victim had stolen some cash from the reception counter of the hospital and had handed it over to the appellant Mahesh. Though, one need not delve into all these factual aspects, this circumstance, indeed, is a material circumstance, which needs to be borne in mind while appreciating the facts and circumstances of the matter in hand, particularly, delay in lodging the FIR and delay in coming out with the allegations against Dr. Yadav.

12] Apart from the above state of affairs, the FIR and even the statements of the victim under Section 164 of Cr.P.C., she has not specifically attributed knowledge on the part of the appellants about her caste, which is a vital ingredient for constituting an offence punishable under Section 3(1)(w) of the Atrocities Act.

13] Considering all the aforementioned facts and circumstances, in my considered view, it is a fit case where both the appeals deserve to be allowed and are accordingly allowed. The impugned orders are quashed and set aside.

14] In the event of arrest of Dr. Yadav, in connection with Crime No. 0186 of 2021 registered at Police Station, Ambajogai City, Dist. Beed for the offences punishable under Sections 354, 506 of IPC and Section

3(1)(w)(ii) of the Atrocities Act, he shall be released on bail on his executing personal recognizance for an amount of Rs. 25,000/- (Rs. twenty five thousand) and furnishing a solvent surety in the like amount subject to following conditions :-

[i] He shall attend the concerned police station as and when called by the Investigating Officer and shall cooperate him.

[ii] He shall not tamper the evidence or influence the witnesses.

15] The appellant Mahesh be released on bail on his executing personal recognizance for an amount of Rs. 25,000/- (Rs. twenty five thousand) and furnishing a solvent surety in the like amount, subject to following conditions :-

[i] He shall attend the concerned police station as and when called by the Investigating Officer and shall cooperate him till filing of the charge sheet.

[ii] He shall not tamper the evidence or influence the witnesses.

[iii] Bail before the trial court.

[MANGESH S. PATIL]
JUDGE

grt/-