

Vishwanath
S. Sherla

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL APPEAL NO.85 OF 2021

ABC

... Appellant

Vs.

1. State of Maharashtra
2. XYZ

... Respondents

Mr.Kuldeep S. Patil for the Appellant
Ms.S.D. Shinde, APP, for Respondent – State

**CORAM: S.S. SHINDE &
MANISH PITALE, JJ.**

DATED: FEBRUARY 2, 2021

P.C.:

1. At the outset, it is required to be noted that since the allegations against the appellant are in respect of the alleged sexual assault, the identity of the first informant and also the appellant needs to be concealed and hence, the appellant is referred to as “ABC” and Respondent No.2 – Complainant is referred to as “XYZ”. The Registry is directed to maintain the record accordingly.

2. Heard the learned Counsel appearing for the appellant and the learned APP appearing for the Respondent No.1 – State.

3. The learned Counsel appearing for the Appellant submits that the other co-accused have been released on anticipatory bail and, therefore, he is also entitled to be released on anticipatory bail. He further submits that the dispute arose out of civil transactions for purchase of two flats. The price of each flat is Rs.20 lakhs. According to the appellant, the complainant has paid only Rs.3,50,000/- in respect of one flat and one Vikas Bhima Londhe paid Rs.8,50,000/- in respect of another flat. The sum and substance of the arguments is that the entire controversy arose out of the civil transactions. The allegations made are totally false. The prosecutrix is having three children and it is impossible that she was staying alone at the time of commission of an alleged offence. It is submitted that the complainant and another person, who have purchased the flats, are already in possession of the said flats.

4. On the other hand, the learned APP appearing for the State, invites attention of this Court to the allegations in the First Information Report and submits that not only the allegations would attract the ingredients of section 376 of Indian Penal Code but also

the provisions of the Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are made applicable. Therefore, the learned APP submits that in view of the express bar under section 18 and section 18A of the Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989 not to invoke section 438 of Code of Criminal Procedure for anticipatory bail, once the ingredients of the said offence are disclosed, the appeal may be dismissed.

5. On appreciating the rival contentions and upon perusal of the allegations contained in the First Information Report, prima facie, the ingredients of the alleged offences are disclosed and particularly, under the special Act i.e., the Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In that view of the matter, we are unable to persuade ourselves to accede to the prayer of the appellant to invoke section 438 of the Code of Criminal Procedure and release him on anticipatory bail.

6. For the reasons aforesaid, the appeal stands dismissed.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)