

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 324 OF 2020

Nilesh Natha Darekar

... Appellant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr.Vijaykumar Dighe for Appellant.

Mrs.Rutuja Ambekar, A.P.P. for Respondent No.1-State.

Mr.Avinash A. Naik appointed through Legal Services Committee for Respondent No.2.

Mr.M.P. Patil, B.No.2569, Police Constable, Shikrapur Police Station.

CORAM : A.S. GADKARI, J.

DATE : 30th March 2021.

PC. :

This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment Act 2015) (for short, "S.C. & S.T. Act") for pre-arrest bail under Section 438 of the Code of Criminal Procedure in C.R. No. 33 of 2020 dated 27th January 2020 registered with Shikrapur Police Station, District Pune Rural, under Sections 354(D), 306 read with 34 of the Indian Penal Code; and Sections 3(1)(w)(i), 3(2)(va), d(2)(v) of the S.C. & S.T. Act.

2. Heard Mr.Dighe, learned counsel for the appellant, Mrs.Ambekar, learned A.P.P. for the respondent No.1-State and Mr.Naik, learned counsel for

the respondent No.2. Perused the record of investigation.

3. The First Information Report dated 27th January 2020 has been lodged by Mr.Sanjay R. Gaikwad, father of deceased Ms.Nikita Gaikwad. It is the prosecution case that, accused No.1 Pravin Patil and accused No.2 Sarjerao @ Balu Vitthal Darekar were having evil eye on his daughter and they used to tease her. That, on 21st January 2020, when the informant had been to his work, he received a phone call at about 3.30 pm from his landlady that, Ms.Nikita has committed suicide by hanging at his residence. He therefore lodged the present crime originally against accused No.1 Pravin Patil and accused No.2 Sarjerao @ Balu Vitthal Darekar. During the course of investigation, the role of appellant being accused No.3 is surfaced on record. A remand report dated 12th February 2020 was accordingly filed by the Investigating Officer before the learned Special Court, Shivajinagar, Pune mentioning the names of appellant and co-accused Parmeshwar @ Bhavdya Nana Gaikwad. The remand report also mentions the role played by the appellant in the present crime.

The appellant herein thereafter preferred an application for pre-arrest bail bearing Criminal Bail Application No.560 of 2020 before the Additional Sessions Judge, Pune, which has been rejected by the impugned Order dated 12th February 2020.

4. Mr.Dighe, learned counsel for the appellant submitted that, the name of the appellant has not been mentioned in the First Information Report by the informant i.e. father of deceased. That, the appellant has been falsely implicated in the present crime. He further submitted that, merely because the deceased was belonging to scheduled caste, the provisions of S.C. & S.T. Act are applied to the present crime. That, the informant himself in the First Information Report has named the accused persons and has not named the appellant and therefore, the appellant is not concerned with the present crime. He submitted that, as the appellant has been falsely implicated in the present crime, he deserves to be protected by pre-arrest bail. He therefore prayed that, the present appeal may be allowed.

5. At the outset, it is to be noted here that, it is the well settled position of law that, First Information Report is not an encyclopedia of crime and it only sets the criminal law into motion. Perusal of record of investigation would clearly indicate that, on 21st January 2020 at about 2.00 pm deceased Ms.Nikita had called her friend Mr.Rakesh Shelar near Sanaswadi Chowk for meeting. They thereafter left the said spot. After sometime Rakesh Shelar received a phone call from the phone of Ms.Nikita. From her phone a boy was talking and the said person called Rakesh Shelar at the same place where he had been earlier with Ms.Nikita. When Rakesh Shelar reached at the said spot,

the concerned person asked Rakesh Shelar as to how he knows Nikita. When Rakesh Shelar told him that he is a friend of Ms.Nikita, the appellant and said other person abused Rakesh Shelar in filthy language. That, the appellant assaulted on the head of Rakesh Shelar with a rod and also slapped Ms.Nikita on her face. Due to the said assault, the brother of Rakesh Shelar namely Prashant Shinde, who was with him, fled away from the scene of offence. Rakesh hit a stone to the said other boy and fled away from his bike. The said version of witness Rakesh Shelar has been duly corroborated by a witness, namely Ms.Vaishnavi Sanjay Gadade. Statements of the said two witnesses, namely, Rakesh Shelar and Ms.Vaishnavi Gadade have been recorded under Section 164 of the Criminal Procedure Code by the Judicial Magistrate First Class, Ghodnadi, Shirur. The version of Rakesh has been further corroborated by Mr.Prashant Shinde in his statement dated 25th January 2020 recorded by police. The record of investigation further reveals that, there is an independent eye witness, namely, Mrs.Suman Chaudhary, who has witnessed the fact of slapping on the face of Ms.Nikita by one boy on the date and time of incident near her shop.

6. The record indicates that, the incident of abuse and assault by the appellant and co-accused Parmeshwar @ Bhavdya Nana Gaikwad took place at about 2.00 pm of 21st January 2020 and thereafter immediately before 3.30

pm Ms.Nikita committed suicide by hanging at her residence. It is thus apparent that, due to the abuse and assault by the accused appellant and co-accused Parmeshwar @ Bhavdya Nana Gaikwad and the insult meted out to her by the appellant, deceased Nikita took the drastic step of ending her life within a very short span of time.

7. Perusal of record further indicates that, there are in all four accused persons, who are responsible for abetting Ms.Nikita to commit suicide. The crime has taken place in two parts. In the first part, accused Nos.1 and 2, namely, Pravin Patil and Sarjerao @ Balu Vitthal Darekar respectively, were responsible for stalking at Ms.Nikita and keeping an evil eye on her. In the second part, it is the appellant along with co-accused Parmeshwar @ Bhavdya Nana Gaikwad, who assaulted Rakesh Shelar and slapped Ms.Nikita on her face thereby abetted suicide of Ms.Nikita on 21st January 2020, prior to 3.30 pm. There is more than sufficient material available on record to show clear complicity of the appellant in the present crime.

8. After taking into consideration serious allegations against the appellant, his clear complicity in the present crime and the need of the Investigating Agency to custodialy interrogate appellant, the prayer of the appellant for pre-arrest bail cannot be entertained.

9. Perusal of impugned Order dated 12th February 2020 indicates that, the Trial Court has not committed any error either in law or on facts while rejecting the application of the applicant.

Appeal being de hors of merits is accordingly dismissed.

[A.S. GADKARI, J.]