

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.461 OF 2020

Rupesh Pandit Kalyankar

.... Appellant

Versus

State of Maharashtra & Another

.... Respondents

....

Mr. Nagesh Chavan, Advocate for the Appellant.

Ms. S.D. Shinde, APP, for Respondent No.1 -State.

Mr. Prashant V. Nayak, Advocate for Respondent No.2.

....

**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 22 DECEMBER 2021

P.C.

This is an Appeal under Section 14-A of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'Atrocities Act') against the order dated 6 October 2020 passed by the learned Additional Sessions Judge, Sangli in Anticipatory Bail Application No.1090/2020. Vide that order, the Appellant's application for anticipatory bail under Section 438 of Cr.P.C. in connection with C.R. No.267/2020 registered at Sangli City police station

under Section 364-A, 364, 342, 323, 504, 506 read with 34 of and under Section 3(2)(va) of the Atrocities Act.

2. The FIR was lodged by one Ashish Sankpal on 22.8.2020. He has stated that the informant's brother Amol Sankpal was doing a job for Megha Research and Solution, Pune. He had accepted money from some people in Sangli and had invested it in shares of that company. In November 2019, the company went in liquidation. In January 2020, some of the investors had confronted Amol. At that time, Amol had promised to return the amount and at that time the matter was put to rest. On 22 August 2020 at about 4.00 p.m., the informant who had gone to Kolhapur, received a phone call from Amol's mobile phone. Amol told him that the same people who had harassed him in January 2020 had again encircled him and they were demanding their money and that he was being abducted. The informant rushed back to Sangli by evening. He did not find his brother. Therefore, he lodged this FIR.

3. The investigation commenced. Since the informant and his brother were belonging to Scheduled Caste, the provisions of the Atrocities Act were also invoked.

4. The Appellant preferred an application for anticipatory bail, as mentioned earlier, which was rejected and under the provisions of the Atrocities Act he has preferred the present Appeal.

5. Vide order dated 23 October 2020 passed in this appeal, a learned Single Judge of this Court had granted interim protection to the Appellant. The same relief was continued by a Division Bench of this Court vide order dated 9 April 2021.

6. Heard Shri Nagesh Chavan, learned counsel for the Appellant, Smt. S.D. Shinde, learned APP for Respondent No.1 and Shri Prashant Nayak, learned counsel for Respondent No.2.

7. Learned counsel for the Appellant submitted that the Appellant himself belongs to a Scheduled Caste as per the caste certificate annexed at Exhibit-D. He submitted that the provisions of the Atrocities Act would not be applicable against him and, therefore, the bar for grant of anticipatory bail will not operate against him. He further submitted that the prosecution case is false against the Appellant and he is roped in as an afterthought. There was no monetary transaction between him and the victim Amol. He is on interim protection for more than a year. He has co-operated with the investigation and he has attended the police station, whenever called.

8. Learned counsel for the intervenor opposed this Appeal based on the FIR and the statements of the victim himself. He submitted that the other accused were arrested and this is not a case where protection of anticipatory bail could be granted to the Appellant.

9. Learned APP also opposed this Appeal. She submitted that the victim has named the Appellant and, therefore, his custodial interrogation is necessary; particularly when the offence alleged is serious.

10. We have considered these submissions. The version of the victim in this context is important. The victim Amol has given his first statement on 23 August 2020. He has stated in this statement that, between January 2018 to October 2018, he was marketing the business of his company and used to give information about the company's products to its customers. He had taken various amounts from about sixteen persons. The amounts ranged from Rs.Thirty Thousand to Rs.Two Lakh Seventy Thousand. The company went in liquidation in October 2018. Amol was removed from his job. The persons, from whom the money was taken, were after Amol for repayment of their investments. In February 2020 the investors Pandit Kumbhar, Shashikant Sutar, Vikas Chougule and Rajkumar Kharat forced him to sit in a car of Shashikant Sutar

and he was taken to Kolhapur. He was made to execute some documents and was made to sign some documents. Since March 2020, accused Sachin was calling him and giving threats. He was telling Amol to repay the amount of aforementioned investors. On 22 August 2020, he was stopped by an unknown person traveling in Safari car. There were two persons in the car. He was not knowing these persons. They told him to make repayment to the aforementioned investors. He was assaulted. He was forcibly taken to a nearby room. His belongings were taken away. One Rahul Bhosale was asked to keep watch on him. On 23 August 2020 Rahul Bhosale was taking Amol for lunch at 2.30 p.m. on his motorcycle. At that time, the police chased them and brought them to the police station. After that, Amol's statement was recorded.

11. Significantly in this statement, Amol Sankpal has not named the present Appellant. He has not named two persons who had come in Safari car. In his statement dated 24 August 2020, he gave further details. In that statement, for the first time, Amol had named the present Appellant. He stated that in February 2020, the Appellant was involved in threatening Amol. Therefore, there is reference to the Appellant's name in respect of the earlier incident. In this statement also he has not stated about the Appellant's role in the abduction on 22 August

2020.

12. His statement was again recorded on 5 September 2020. Again similar statement was given and only in respect of previous history the Appellant's name was mentioned. Therefore, it can be seen that neither the informant nor Amol had named the present Appellant regarding the incident in August 2020. If involvement of the Appellant in the earlier incident was true, the informant would not have failed to mention the Appellant's name in his FIR. Since the victim Amol knew the Appellant, he would have named him in his first statement. At that time the allegations of abduction are made against Sachin, his friend and one Rahul Bhosale. Amol was knowing the Appellant before August 2020. Thus, there is no cogent evidence against the Appellant as far as the incident dated 22 August 2020 is concerned. The Appellant is not one of the investors either.

13. In respect of the past history also there is a vague and general statement which raises sufficient doubt. The Appellant was on interim protection since 23 October 2020. There are no allegations that he has misused the liberty. Therefore, it would be fit and proper if the interim relief granted is confirmed in the background of the above discussion. Hence, the following order:

:: O R D E R ::

- (i) In the event of his arrest in connection with C.R. No.267/2020 registered with Sangli City police station, Sangli, the Appellant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Appellant shall cooperate with the investigation and attend the police station as and when called.
- (iii) Criminal Appeal is accordingly disposed of.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Deshmane (PS)