

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.25 OF 2021

[Abdul Imran Abdul Hamid .vs. State of Maharashtra, through Police Station Officer, Police Station
Gadge Nagar, District-Amravati and one]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.P. Thakre, Advocate for appellant,
Shri A.R. Chutake, APP for respondent no.1-State.

CORAM : PRASANNA B. VARALE AND
N.B. SURYAWANSHI, JJ.

DATED : 22.03.2021.

The appellant, by this appeal, challenges the impugned order passed by the learned Special Judge (Atrocity) and Additional Sessions Judge-2, Amravati, below Exh.1 in Criminal Bail Application No.1563/2020 thereby refusing the relief of anticipatory bail to the appellant.

2. Second respondent lodged a report at Gadge Nagar Police Station alleging that in September-2020, the appellant was working as a mason next door. At that time, she became acquainted with the appellant. The acquaintance turned into love affair. The appellant promised to marry her and thereafter 5 to 6 times, he committed sexual intercourse with her against her consent. When she asked him to marry her, he refused.

Therefore, she claimed that the appellant has committed rape on her. This report was registered at Crime No.1116/2020 with Gadge Nagar Police Station, Amravati, for offences punishable under Section 376 (2) (n) of the Indian Penal Code and under Section 3 (1) (w) (i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the said Act').

3. The appellant therefore approached the learned Trial Court for anticipatory bail and the learned Trial Court rejected the bail application mainly on the ground that the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are attracted, so also offence under Section 417 and 376 (2) (n) of the Indian Penal Code is *prima facie* made out against the appellant. The learned Trial Court, therefore, held that in view of bar under Section 18 of the said Act, the application filed by the appellant was not tenable.

4. Heard the learned Advocate for the appellant and the learned APP for the respondent no.1-State. Perused the papers of investigation.

5. It transpires from the investigation papers that there was a love affair between the appellant and

the second respondent. The appellant is 21 years of age, whereas the second respondent is 23 years of age. It appears that the appellant and the second respondent had been in relationship for a considerable period of time prior to lodging of first information report. Even as per the contention of the second respondent, there was a love affair between her and the appellant. Prima facie, therefore, the physical relations appear to be consensual.

6. There is absolutely no material on record to make out ingredients of Section 3 (1)(r) (s) of the said Act. Therefore, we are of the *prima facie* view that the bar under Section 18 of the said Act would not be attracted in the facts of present case.

7. The learned Trial Court has failed to appreciate the material on record in proper perspective and has committed an error in rejecting the bail application.

8. The appellant was granted interim protection vide order dated 14.01.2021 and the appellant has cooperated during the investigation. The investigation appears to be almost complete. Custodial interrogation of the appellant is not necessary in the facts of the present case. In that

view of the matter, the appeal deserves to be allowed and the same is accordingly allowed, by setting aside the impugned order passed by the learned Special Judge (Atrocity) and Additional Sessions Judge-2, Amravati below Exh.1 in Criminal Bail Application NO.1563/2020.

9. The interim order dated 14.01.2021 is hereby confirmed.

10. The appellant shall cooperate in the investigation and shall attend the respondent no.1- Police Station, as and when summoned, till filing of the chargesheet.

11. Criminal Appeal is disposed of accordingly.

JUDGE

JUDGE