

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****CRIMINAL APPEAL NO. 43 OF 2021**

APPELLANT :- Jamnalal S/o Devilal Gadwal, Aged 54 years, Occ. Private, R/o. Rani Society, Pardi Ekta Nagar, Nagpur.

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, Through P.S.O. PS Imamwada, Dist. Nagpur.
2. Usha Sunil Sahare, Aged 48 Years, Occ. Housewife, R/o, Pachnal Chowk, Police Station Imamwada, Nagpur.
3. Nikita Sonu Moon, Aged : 28 Years, Occ: Housewife, R/o: Rented in House Bhushan, Ashok Chowk, Behind NIT Garden, Sirespeth, Nagpur.
(Victim) (Given as per page No.22)

Mr. S. S. Sohoni, Advocate for the appellant.
Mr. T.A.Mirza, A.P.P for respondent No.1.
None for respondent Nos.2 and 3.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 27.04.2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.

2. ADMIT.

3. This is an appeal under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 challenging order dated 16/12/2020 passed by the Additional Sessions Judge-11, Nagpur in Criminal Miscellaneous Application No.3390 of 2020 below Exhibit-1 in connection with Crime No.359 of 2020 registered with respondent No.1-Police Station for offences punishable under sections 376, 370, 366 read with section 34 of the Indian Penal Code and section 3(1)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “SC ST Act”).

4. The First Information Report came to be registered against the appellant and others with accusations that daughter of the complainant (victim) had called the complainant and told that the appellant persuaded victim to accompany her at Rajasthan and sold victim for an amount of Rs.2,50,000/- to a person in Rajasthan and performed marriage with him. The said fact was informed to the complainant by the victim by making telephone call.

5. The appellant, therefore, filed an application under section 438 of the Code of Criminal Procedure seeking pre-arrest bail in relation to Crime No.359 of 2020 with Additional Sessions Judge-11, Nagpur. The learned Sessions Judge by the impugned order rejected application of the appellant under section 438 of the Code of Criminal Procedure.

The appellant has therefore, filed present appeal under section 14-A of the SC ST Act.

6. This Court, on 21/01/2021 issued notice to the respondents.

7. We have heard learned Advocate for the appellant. It is submitted that the victim is major and was having knowledge about the acts done by her at Rajasthan. It is submitted that investigation is complete and custodial interrogation is not necessary. Learned APP submitted that the appellant is habitual offender and offence punishable under sections 376, 366-A, 370, 370-A of the Indian Penal Code and under the provisions of POCSO Act is pending against the appellant. The appellant is released on bail in the said offence. It is submitted that there is likelihood of tampering of evidence if the appellant is protected.

8. We have carefully considered the allegations in the First Information Report. The learned APP has placed on record case diary. We have also carefully considered the case diary. The case diary reflects statements of victim and other witnesses. From the case diary, it appears that there is *prima facie* material available against the appellant. The appellant has criminal antecedents to his discredit for the offences punishable under sections 376, 366-A, 370, 370-A of the Indian Penal Code and under the provisions of POCSO Act. The

allegation against the appellant is of immoral trafficking. Immoral trafficking is now wide spread. Victims who are lured, forced or threatened for the purpose of bringing them to the trade should be given all protection. We, at this stage, cannot enter into details in regards merit of the matter so as to prejudice the case of one party or the other at the trial. But it is now well settled principle of law that while granting anticipatory bail, the Court must record the reasons therefor. There is no allegation that the victim had any animosity against the appellant. There is no reason for the victim to falsely implicate the appellant. The prosecution has alleged the victim was sold to a person at Rajasthan, which *prima facie* finds corroboration from the testimony of witnesses and thus, we can safely arrive at conclusion that at this stage, evidence of victim and other witnesses should not be rejected out rightly.

9. The learned Sessions Judge has assigned cogent reasons for rejecting anticipatory bail of the appellant. The criminal antecedents of the appellant is the factor which rightly weighed the learned Sessions Judge. The allegations against the appellant are serious, therefore, we are satisfied that the learned Sessions Judge has rightly rejected anticipatory bail application of the appellant. There is no merit in the appeal. Hence, the appeal is dismissed.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)