

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 618 OF 2022

Afshamaskar Laikhkan Pathan
@ Afsha Firdos Ujede and Others

...Appellants

Versus

The State of Maharashtra & Another

...Respondents

...

Mr. Rohit P. Patwardhan, Advocate h/f. Mr. Satej S. Jadhav, Advocate for the Appellant.

Mr. P.G. Borade, APP for Respondent No. 1 – State.

Ms. Sangita A. Sambre, Advocate for Respondent No.2 (Appointed)

...

**CORAM : R.G. AVACHAT &
R.M. JOSHI, JJ**

DATE : NOVEMBER 22, 2022.

ORDER (PER R.M. JOSHI, J)

1. This appeal is filed under Section 14(1)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short '**Act of 1989**') against order dated 08.08.2022 passed by the learned Additional Sessions Judge-2, Latur in Criminal Bail Application No. 474/2022 for the offences punishable under Sections 376(2)(n), 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and Section 3(1)(r)(s) & 3(2)(va) of the Act of 1989.

2. Heard learned Advocate for the Appellant and learned APP and

learned Advocate for Respondent No.2/informant.

3. On 12th July, 2022 report came to be lodged with Shivajinagar Police Station, Latur by victim alleging that she had friendship with Arafat Khan which resulted into an affair between them. According to the victim, Arafat proposed her for marriage and fixed date of the marriage as 05th December, 2019. He called upon her to changer her religion to which she agreed. It is further stated in the FIR that in the year 2021 she insisted for the marriage, but Arafat kept on giving false assurances about the same. In January, 2022, Arafat obtained premises on rent for victim. In April, 2022, she came to know that marriage of Arafat is fixed with another girl and in spite of the same he assured her of marriage. It is alleged in the FIR that thereafter Mehraj took away entire articles from her shop including certificate of change of religion and Rs. 100 bond. It is alleged that on 01st July, 2022 when she went to meet Arafat at Teli Galli, Latur, she was abused over caste by Arafat and his relatives. It is alleged that she was also beaten by them.

4. On the basis of this FIR, Appellants apprehended arrest and hence, approached to the Sessions Court for grant of bail and the said application came to be rejected by passing impugned order.

5. *Prima facie* consideration of material on record indicates that there is inordinate delay caused in lodging FIR. Assuming that some incident

has occurred on 01st July, 2022, there is no valid justification provided by informant for not lodging the said FIR immediately. The delay in lodging FIR creates doubt about its veracity. Apart from this, perusal of the FIR does not show that victim had any acquaintance with the Appellants herein, who are relatives of Arafat. It does not appear to the conscious that number of persons in one voice hurled abuses against victim over her caste, which also are vague in nature. Apparently it seems that victim has grievance against Arafat and considering the delay in lodging FIR, the possibility of roping present Appellants cannot be ruled out. Nothing is to be recovered at the instance of present Appellants in connection with the crime in question.

6. In the circumstances, ad-interim protection granted to the Appellants deserves to be confirmed.

7. It is clarified that the aforesaid observations are made only on *prima facie* consideration of material on record for decision of this appeal and the same shall not have bearing on trial.

8. In view of the above, the Appeal succeeds. Hence the following order:

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Impugned order below Exh.1 passed in Criminal Bail Application No. 474 of 2022 by the Additional Sessions

Judge-2, Latur on 08th August, 2022, is quashed and set aside and said application stands allowed.

(iii) The Ad-interim protection granted by this Court on 15th September, 2022 is hereby confirmed, on following conditions:

(a) The Appellants shall not tamper with the prosecution evidence;

(b) They shall attend the concerned police station as and when called for and cooperate in investigation of crime.

(iv) Ms. Sangita A. Sambre, learned Advocate was appointed to represent Respondent No. 2 and we quantified her fees at Rs. 3,000/- to be paid by Legal Aid Services Authority, Aurangabad.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

Malani