

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

CRIMINAL APPEAL NO. 689 OF 2021

Baburao Walu Rathod

..APPELLANT

VERSUS

1. State of Maharashtra
Through Police Station,
Majalgaon (Rural), Dist. Beed

2. Geeta Shesherao Khatikmare
Age: 50 years, Occu.: Labour,
R/o Warola, Tq. Majalgaon,
Dist. Beed

..RESPONDENTS

....

Mr. S.J. Salunke, Advocate for appellant

Mrs. G.L. Deshpande, A.P.P. for respondent no.1 – State

Mr. M.G. Patil, Advocate appointed for respondent no.2

....

CORAM : R.G. AVACHAT, J.

DATED : 27th JANUARY, 2022

PER COURT :

1. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act'). The challenge herein is to order dated 15th December, 2021 rejecting the application of the present appellant for anticipatory bail. The appellant claims to have an apprehension of arrest in connection with Crime No. 288 of 2021 registered with Majalgaon (Rural) Police Station, Dist. Beed for the offences punishable under Sections 354 and 509 of the Indian Penal Code and under Sections 3(2)(va), 3(1)(w)(i), 3(1)(w)(ii) of the Act.

2. Heard. Perused the First Information Report ('F.I.R.') and related papers.

3. Learned A.P.P. and learned counsel for Respondent No.2 – informant would submit that the allegations in the F.I.R. prima facie make out an offence alleged to have been committed by the appellant herein. He is, therefore, not entitled for anticipatory bail in terms of Section 18 of the Act. They, therefore, urged for dismissal of the appeal.

4. Learned counsel for the appellant would, on the other hand, submit that the appellant is seventy two years of age. The allegations in the F.I.R. are improbable one. The informant and her sister had come to his field to steal the cotton. According to him, a false F.I.R. has been lodged. He, therefore, urged for grant of anticipatory bail.

5. Considered the submissions advanced. The informant is fifty years old widow. She is a mother of four married daughters. It is her case that on the given date she, alongwith her sister, had been engaged by the appellant herein for harvesting the cotton. It was about 02.00 p.m. The appellant called the informant to cattle shed. The informant, therefore, went there. The appellant was completely naked. He asked her how much amount she wanted, he is ready to pay her. He caught hold of her hand and made sexual advance. The informant, therefore, raised shouts. Her sister approached.

6. Learned Additional Sessions Judge, rejected the application with the following reasons :-

“I have minutely perused the recitals of F.I.R. It appears that the informant and her sister were plucking and collecting the cotton from the field of the accused since morning time. Thus, it can be seen that the accused has employed the two sisters for said labour work. They both are resident of same village. The informant has mentioned the castes of herself and that of the accused in the F.I.R. Therefore, it can be assumed that the accused must be knowing the caste of the informant and her sister to whom he engaged in his agricultural activities. Therefore, apparently there is nothing to create doubt about prima facie case as established on record. The bar provided under PoA Act is therefore attracted in this case.”

7. It is true that if one goes by the averments in the F.I.R. as it is, the offence prima facie appears to have been committed. Aadhar card of the appellant is placed on record. It is evident there from that he is born in January 1950. As such, he is seventy two years of age. What has been alleged in the F.I.R. is that the appellant was completely naked at the cattle shed. It was day time. The other witness is none other than the sister of the informant. It is not that the informant is branded a liar. The fact is however, that it is the case of the appellant that both the informant and her sister had been to his field for committing theft of the cotton. The allegation that he was completely naked, does not appeal to the conscience. The appellant is seventy

two years old man. There is no independent material prima facie brought in support of the allegations in the F.I.R. In the fitness of things, I am inclined to allow the appeal. Hence the following order :-

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The order dated 15/12/2021, passed by learned Additional Sessions Judge, Majalgaon, District Beed in Criminal Bail application No.339/2021 is set aside.
- (iii) In the event of arrest of the appellant in connection with Crime No.288/2021, registered at Majalgaon (Rural) Police Station, District Beed for the offence punishable under Sections 354, 509 of the Indian Penal Code and under Sections 3(2)(va), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.
- (iv) The appellant shall appear before the investigating officer as and when required.
- (v) Fees of Mr. Mangesh G. Patil, learned counsel appointed for Respondent No.2, is quantified at Rs.5,000/-.

(R.G. AVACHAT, J.)