

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 570 OF 2022**

Sagar Sunil Varpe ...Appellant
Versus
State Of Maharashtra And Anr. ...Respondents

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Mr. Ganesh Gupta a/w Ashish Rai, Advocate for the Appellant.

Mr. Ajinkya Udane advocate for Respondent No.2.

Mr. Arfan Sait, APP for the Respondent – State.

Dy. S.P. Mr. Gaware, Shirur, Division Pune (Rural) present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st SEPTEMBER, 2022

PC :

1. This is an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short SC and ST Act). The applicant is apprehending arrest in connection with FIR No. 279 of 2022 registered with Shikrapur police station on 18.03.2022 for offences punishable under Sections 354, 354-D, 506 of the Indian Penal Code and Sections 3(1),(w),(i), 3(1),(w),(ii) of the SC and ST (Prevention of Atrocities) Act and Section 12 of the Protection of Children from Sexual Offences Act (for short “POCSO”).

2. The complainant has alleged that she is the student of 10th standard. She belongs to Navbaudhh caste. On

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17.03.2022 she had visited the house of her friend. At that time, the accused came at the said place. Accused was blowing horn of his vehicle. Complainant and her friend approached him. At that time the accused told him them that he is going to Narayanpur and his wife is also accompanying him. Both of them sat in the car of the accused. After travelling for some distance the accused brought liquor. The car was stopped. The accused insisted to complainant and her friend to consume liquor. They consumed it. The accused caught hand of the complainant. The accused threatened the complainant that he would make her photographs viral on social media. The complainant managed to release her hand. The accused has been stalking her since last one year, when she used to go to school. He used to threaten her. Similar incident had occurred one year ago when the accused had touched her with intention to outrage her modesty. She did not lodge complaint due to fear. Her family members gave her courage and therefore, she approached police station and lodged the complaint.

3. The appellant preferred an application for anticipatory bail before the Sessions Court which has been rejected vide order dated 29.04.2022. While rejecting the said

application, learned Sessions Judge has observed that prima facie the offence under the Atrocities Act may not be attracted. Offence under Section 354-D of the Indian Penal Code is made out.

4. Learned advocate for the appellant submitted that complaint is concocted. No offences are made out. The provisions of Atrocities Act are not attracted. Section 354-D is bailable. Offence under Section 354 is not made out. Interim relief has been granted to the appellant. Custodial interrogation of the appellant is not necessary.

5. Learned APP submitted that Section 354 of the IPC clearly made out in the FIR. Assuming that the provision of Atrocities Act are not attracted, the allegations in the FIR with regard to the Act of molestation are serious in nature. The victim is minor. Section 12 of the POSCO Act has been invoked. There are criminal antecedents against the appellant. Six other cases were registered against him. The appellant is not entitled for anticipatory bail. After the interim protection was granted to the appellant, he has tampered with the evidence. Statements of witnesses were recorded regarding tampering of evidence. Conversation between the appellant and the person to whom he had called while attempting to tamper the evidence has been

recovered during the course of investigation. Hence, appeal may be rejected.

6. Learned advocate for respondent No.2 adopted submissions of learned APP. It is submitted that Section 354 as well as Section 354-D of IPC and Section 12 of the POCSO Act are attracted. He has tendered affidavit of the mother of victim, wherein it is stated that the appellant tried to get in touch with known people and she had informed about it to the Police.

7. In rejoinder, learned advocate for appellant submitted that merely on the ground that there are antecedents relief may not be refused to the appellant. The offence under Section 354 of the IPC is not made out. There was no intention to molest the victim. Victim and accused were acquainted with each other. They were travelling in the car with the accused. The affidavit filed by mother of the victim is vague. She has not specified name of the person to whom the appellant had approached.

8. On perusal of the FIR it is apparent that the complainant has alleged that accused was stalking her. She has referred to incident of travelling in the car with the accused. She had also stated that in the past accused had molested her and on the day of present incident the

accused caught her hand. The description of incident would indicate that accused was outraging her modesty. The offence under Section 354 and 354-D is made out. Section 12 of the POCSO Act is invoked. Victim is minor. Applicant has antecedent.

9. Six other cases were registered against the appellant. All these cases were registered with Shikrapur police station in C.R. No. 693 of 2017, 313 of 2015, 396 of 2017, 676 of 2017, 458 of 2019 and 459 of 2020.

10. Considering the aforesaid circumstances, no case for grant of anticipatory bail is made out.

ORDER

- (i) Criminal Appeal No. 570 of 2022 is dismissed and disposed of.
- (ii) Interim order dated 10.06.2022 stands vacated.
- (iii) At this stage, learned advocate for appellant seeks extension of interim relief. The prayer is rejected.

(PRAKASH D. NAIK, J.)