

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.614 OF 2022

Sheru Haider Wagh

.. Appellant

Versus

The State of Maharashtra and Anr.

.. Respondents

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Mr.Mohammad Abdi, Advocate for the Appellant.

Mr.A.R. Patil, APP for the Respondent No.1-State.

Mr.Ajinkya Udane, Advocate for Respondent No.2.

Mr.Chandrakant Jadhav, ACP, Nalasopara Division, present.

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CORAM : PRAKASH D. NAIK J.

DATED : JULY 04, 2022.

P.C. :

This is an Appeal under Section 14-A of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act 1989 (“SC & ST Act”, for short). The appellant is apprehending arrest in connection with C.R.No.17 of 2022, registered with Arnala Police Station on 17th January, 2022, for offences punishable under Sections 354, 323, 504 and 506 of Indian Penal Code (“IPC”, for short) and Section 3(1)(3), 3(1)(j), 3(1)(k) of the SC and ST (Prevention of Atrocities) Act and Sections 11 and 12 of the Protection of Children from Sexual Offences Act (“POCSO Act”, for short).

2 The application for anticipatory bail preferred by the appellant has been rejected by the Sessions Court, Vasai, *vide* order dated 14th March, 2022.

3 The complainant has alleged that she is resident of Satpala, Sambhalepada, Ganesh Ghat, Virar (West), Taluka Vasai. She belongs to Adivashi Varli community. Her daughters are aged about 17 years and 19 years. The accused is resident of Arnala Bori Pada. Accused/appellant got acquainted with the complainant's daughter. Thereafter the accused started visiting the house of the complainant. He used to take the complainant's daughter to the college and drop her at her residence. Since the complainant and her husband were on duty, they were not aware of this fact. The complainant was informed about it by her neighbours and relatives. The complainant and her husband inquired with their daughter. She informed that she is in love with the accused and he would perform marriage with her. She was convinced by them that she should concentrate on her education and stop having contact with the accused. The complainant was informed by neighbours and relatives that the accused meets their daughter. To ascertain this fact, the complainant and her husband followed their daughter and found that her scooty was parked in front of the house of the accused. They peeped into the house of the accused and noticed

that the accused was getting close to their daughter and touching her body. To avoid adverse publicity, they left the place of incident. Thereafter, the accused started spreading rumour that he would propose to marry complainant's daughter and defamed her family. The complainant and others approached the accused and questioned him about it. They were abused and threatened by saying that they will be ousted from area. The accused is President of Lal Bavta Party. On 16th January, 2022, about 06:30 p.m., accused and three others came in front of the house of the complainant and abused them on caste. They questioned the complainant as to why they are opposing his marriage with the daughter of complainant. They assaulted husband of complainant with fist blows. The lady accompanying accused brought several other ladies from vehicle and tried to pressurize complainant and her family.

4 Learned advocate for the appellant submitted that the offence under the atrocities is not made out. The complaint was lodged belatedly. Provisions of POCSO are not applicable. The appellant also belongs to Adivashi community. There was love affair between the appellant and complainant's daughter. Custodial interrogation of the appellant is not necessary. The complaint is false. Statement of complainant's daughter under Section 164 of Cr.P.C. was recorded.

She has denied such incident. Provisions of Atrocities Act cannot be applied to applicant. The alleged offence under Atrocities Act cannot be applied to the facts of the case. The appellant has been granted bail in another case, with directions to attend police station. In the event, appellant visits police station for complying directions of attendance, he will be arrested. The Sessions Court has mechanically rejected application for anticipatory bail. Reliance is placed on decisions in the case of *(i) Siddharam Satlingappa Mhetre Vs. State of Maharashtra*¹; *(ii) Sham Ingale and Ors. Vs. State of Maharashtra and Ors.*²; *(iii) Jonathan Nitin Brady Vs. State of West Bengal*³; and *(iv) Chaudhary Pravinbhai Revabhai Vs. State of Gujarat* dated 2nd March, 2022, decided by Gujarat High Court.

5 Learned APP strongly opposed the relief sought in this appeal. It is submitted that anticipatory bail should not be granted to the appellant. Offence under the SC and ST (Prevention of Atrocities) Act are made out in the FIR. The complainant's daughter is minor. The appellant has not produced valid documents to establish that he belongs to Adivashi community. It is apparent that, the complainant, her husband and victim girl are under pressure of appellant. The appellant is the resident of Arnala. The school leaving certificate of

1 AIR 211 SC 312

2 2019 ALL MR (Cri) 3699

3 (2008) SCC 660

appellant mentions his caste as Muslim and his name is shown as Sheru Abbas Haidar Abbas Siya. On 3rd October, 2019, he has changed his name through Maharashtra Government Gazette as Sheru Haidar Wagh. The appellant claims to be president of Lalbavta Party gives false assurances to illiterate people from Adivashi community and organise agitations and morcha. There is ration card in the name of his mother. In 2020, the appellant took ration card of illiterate women Baby Ughade from Agashi and inserted his name Shery Haider Waght (nephew) and pretends himself as person from Adivasi committee. He has not produced any evidence to police or Court to support his claim that he belongs to Adivasi community. The complainant has lodged complaint with police stating that she apprehends that appellant would implicate complainant and her son in false case. Several persons has grievances against the appellant, but, they are not coming forward to lodge complaint due to fear at the hands of appellant. In the event anticipatory bail is granted to appellant, he would create hurdle in investigation. Several complaints are lodged against him with Arnala police station. C.R.No.76 of 2017, for the offences punishable under Sections 325, 323, 452, 504 and 506 of IPC was registered against the appellant. C.R.No.376 of 2021, for the offences punishable under Sections 354, 324, 452, 427, 141, 143, 147, 149, 504 and 506 of IPC, C.R. No.3 of 2022, under Sections

354, 324, 323, 504, 34 of IPC and Section 3(r)(s)(w)(1)(2) of Atrocities Act. Several N.C. complaints are registered against appellant which are numbered as 5512 of 2015, 150 of 2016, 467 of 2017, 507 of 2017, 203 of 2018 and 40 of 2022.

6 Learned advocate for respondent no.2 appointed through Legal Aid, on instructions submitted that the complainant / victim has no objection to grant relief to the appellant.

7 There are no documents on record to support the claim of appellant that he belong to Adivasi community. The daughter of complainant is aged around 17 years. She is minor. The FIR contains allegations against the appellant. The complainant had abused the complainant and her husband on the basis of caste. Assuming there is discrepancy relating to offences registered under Atrocities Act, the nature of allegations in FIR attract provisions of Section 3(4)(Ss) of the said Act. The claim of appellant that he belongs to Adivasi community is not genuine. Three other cases are registered against the appellant. Six N.C. complaints are lodged against the appellant. Complaint No.651 of 2015, is registered on 9th July, 2015, for offences under Sections 504, and 506 of IPC. Complaint No.100 of 2016 is lodged on 26th January, 2016, for offences under Sections 323, 504 and 506 of IPC, N.C. No.507 of 2007, is registered on 4th June, 2017, for

offences under Sections 323, 504 and 506 of IPC, N.C. No.203 of 2018, is registered on 20th February, 2018, for offence under Section 427 of IPC, N.C.No.40 of 2022 is registered on 7th January, 2022, for offence under Sections 504 and 506 of IPC. The possibility that the complainant is under pressure at the instance of appellant cannot be ruled out. The decision relied upon by learned advocate for appellant are decided in the facts of respective cases. No case is made out for grant of anticipatory bail. Apart from bar under Section 18 of Atrocities Act, there is sufficient material to deny relief to the appellant.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Appeal 614 of 2022, is rejected;
- (ii) At this stage learned counsel for the appellant submit that interim protection may be granted to the appellant for a period of one week. During the pendency of the Appeal, no interim relief was granted to the appellant. Hence, request for protection is rejected.

(PRAKASH D. NAIK, J.)