

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.796 OF 2021

Mrs. Shobha Ajit Kalantri : Appellant.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Ramnath V Kini for the Appellant.
Mr. S. S. Hulke, APP for the Respondent No.1/State.
Mr. S A Rajeshirke, Advocate appointed for Respondent No.2.

CORAM : S. S. SHINDE,
SARANG V. KOTWAL, JJ
DATE : 21st April 2022

P.C.

1 The Appellant has filed this Appeal challenging the order dated 30/08/2021 passed by the learned Additional Sessions Judge, Special Court (Atrocities Act), Thane thereby rejecting the application of the Appellant for anticipatory bail in C.R.No.I-151/2021. The Appellant is one of the accused in C.R. No.I-151/2021 registered at Rabodi Police Station for the offences punishable under Sections 376, 417, 420 r/w Section 34 of the Indian Penal Code and under Sections 3(1)(w)(i) of the Prevention of Atrocities (Schedule Caste and Schedule Tribes) Act, 1989, (for short hereinafter referred to as “the said Act”).

2 The FIR is lodged by the complainant on 07/07/2021. In the FIR she has stated that she got acquainted with the Appellant’s son Nishchal in

January 2018 through social networking site. Their acquaintance developed into love affair. In August 2018 Nishchal proposed marriage to the complainant. The complainant accepted the proposal. In the same year 2018 in Ganpati festival, Nishchal introduced the complainant to his mother i.e. the Appellant herein and told the Appellant that they were in love. He expressed his desire to marry her. Even Nishchal's maternal uncle consented to that marriage. The complainant's family had also agreed for the said marriage proposal. Thereafter Nishchal and complainant established physical relations. She has given instances in the FIR of their physical relations. The FIR further mentions that, in July 2019, Nishchal was in need of money, therefore, the complainant helped Nishchal financially. The complainant further alleged in the FIR that she came to know from their friends that Nishchal had more than friendly relations with other girls. In June 2021, the complainant came to know that Nishchal and the Appellant had fixed marriage of Nishchal with another girl. The complainant confronted both of them, however, they denied that. It is the specific case of the complainant that, the Appellant promised her that she would fix the marriage of the complainant with Nishchal. On 14/03/2021 engagement of the complainant and Nishchal took place. It is her specific case in the FIR that on the next day of the engagement, the Appellant called the complainant to her house and humiliated her. The Appellant deleted all the photographs of the engagement ceremony and started opposing the marriage. On 22/05/2021 the Appellant called the complainant and told her

about her objection to the marriage and called off the marriage. On this basis, the FIR is lodged by the complainant.

3 The learned counsel for the Appellant submits that the FIR does not mention the ingredients of Section 3(1)(w)(i) of the Prevention of Atrocities (Schedule Caste and Schedule Tribes) Act. In the FIR no specific role is attributed to the Appellant. The entire dispute is between the Appellant's son and the complainant. Nishchal was arrested and he was granted bail by a Co-ordinate Bench of this Court (Coram : Smt. Sadhana S. Jadhav & Milind N Jadhav, JJ) vide order dated 08/04/2022 passed in Criminal Appeal No.62 of 2022. He further submits that the Appellant's custodial interrogation is not necessary and there is no impediment in granting anticipatory bail to the Appellant as no case under of the Prevention of Atrocities (Schedule Caste and Schedule Tribes) Act is made out.

4 Learned counsel for the complainant relied on the affidavit filed by the complainant before the Co-ordinate Bench in the Criminal Appeal No.62 of 2022. A copy of the said affidavit is taken on record and marked as "X" for identification. Learned counsel for the complainant submits that before registration of FIR, on 05/07/2021 the complainant had given written complaint to the Senior Police Inspector, Rabodi Police Station, Thane (West). In that case, she had made allegations of suffering humiliation after the

engagement ceremony. Learned counsel for the Complainant therefore submits that in the said FIR a case is made out against the Appellant and he opposes grant of anticipatory bail to the Appellant.

5 The learned APP for the Respondent No.1/State has supported the submissions made by the learned counsel for the Complainant.

6 We have considered the submissions made by the learned counsel for the respective parties. We have also perused the order dated 08/04/2022 passed by the Co-ordinate Bench of this Court in Criminal Appeal No.62 of 2022 granting bail to Appellant's son Nishchal. In paragraph 8 of that order, the Co-ordinate Bench has observed that, upon reading the FIR, an offence under the Special Act is not carved from the FIR. The Appellant Nishchal had no intention to cheat the complainant. The engagement ceremony had taken place in the presence of both the families. In the year 2021 itself, the marriage proposal was accepted.

7 We have carefully perused the observations made by the Co-ordinate Bench. In paragraph 9 of that order, it is observed that the said Bench neither found any iota of evidence to show that there was humiliation of the complainant on account of her caste in public view nor the FIR spells out any humiliation in reference to any specific caste.

8 In so far as the submission of the learned counsel for the complainant that, the complainant had mentioned in her complaint filed on 05/07/2021 that she was humiliated in front of others, is concerned, the said allegations are vague in that complaint. Moreover in the FIR signed by the complainant there is specific statement made by her that the Appellant had called the complainant to her house on the next day of the engagement and at that time she was humiliated. Both these statements are contradictory to each other. The Co-ordinate Bench of this Court has observed that an offence under the Special Act is not made out in the FIR. The main allegations are against the Appellant's son to whom regular bail was granted by the Co-ordinate Bench of this Court.

9 Considering this, we are inclined to allow this Appeal and grant anticipatory bail to the present Appellant. Hence the following order :-

:ORDER:

- 1] The Appeal is allowed.
- 2] In the event of her arrest in C.R. No.I-151/2021 registered at Rabodi Police Station, the Appellant – Mrs. Shobha Ajit Kalantri is directed to be released on bail on her executing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only) with one or two sureties in the like amount.

- 3] The Appellant shall attend the concerned police station as and when called and shall extend full cooperation with investigation.
- 4] All these observations are made for the purpose of deciding this Appeal and the Trial Court shall decide the trial on its own merits and in accordance with law.
- 5] The Appeal is accordingly disposed of.

[SARANG V. KOTWAL, J]

[S. S. SHINDE , J]