

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 48 OF 2021

Smt Shila W/o. Purushottam Shahane
 Aged about : 60 Years, Occ.: Household,
 R/o. Sai Gajanan Nagar, Goulkhed Road,
 Shegaon, Tah. Shegaon, Dist. Buldhana

.. Appellant

Versus

1. State of Maharashtra,
 Through P.S.O., Police Station Shegaon,
 Tah. Shegaon and Dist. Buldhana

2. Bhimsen S/o. Vasantrao Ambilkar
 Aged about: Major
 R/o. Vaibhav Nagar, Behind Athavan,
 Dhaba, Shegaon, Tah. Shegaon and Dist.
 Buldhana

.. Respondents

 Mr. Ashwin Deshpande, Advocate for appellant
 Mr. S. M. Ghodeswar, APP for respondent No.1

CORAM : MANISH PITALE AND G. A. SANAP, JJ.
DATE : 04/08/2022

ORAL JUDGMENT (PER : MANISH PITALE, J.)

Heard. **ADMIT.** Heard finally by consent of learned
 counsel for the parties.

(2) By this appeal, the appellant has challenged the
 order dated 05.01.2021 passed by the learned Special Judge,

Khamgaon, thereby an application for anticipatory bail filed on behalf of the appellant was rejected. The appeal has been filed under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short “Act of 1989”).

(3) In the present case, a First Information Report (FIR) was lodged on 10.12.2020 at the behest of respondent No.2 on the basis of which offences were registered against the appellant, her husband and son for the offences punishable under Sections 304-B, 498-A, 323, 504 read with 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961. It is an admitted position that when the FIR was registered, offences under the Act of 1989 were not invoked.

(4) Subsequently, offence under Section 3(2)(v) of the Act of 1989 was added. The appellant had filed application for grant of anticipatory bail in the context of the aforesaid FIR, registered against her. By the impugned order, the application stood rejected, primarily for the reason that there is a specific bar under Section 18 and Section 18-A(a) of the Act of 1989 for grant of anticipatory bail.

(5) In this appeal, while issuing notice on 25.01.2021, this Court considered the fact that the appellant is a woman, aged about 60 years, and considering the facts and circumstances of the case, directed interim protection to be granted to the appellant. The nature of interim order passed in favour of the appellant reads as follows:

“5. Hence, the following order:-

(i) In the event of arrest in connection with Crime No. 492/2020 registered with the respondent No.-1-Police Station, the appellant be released on provisional bail on executing P.R. bond of Rs.20,000/-

(ii) The appellant shall attend the respondent No.1-Police station as and when summoned.”

(6) When the application was called out for hearing, the learned counsel for the appellant has brought to the notice of this Court that co-accused persons i.e. the husband and son of the appellant were granted regular bail by an order dated 05.01.2021 passed by the Court below. It was specifically recorded that the custodial interrogation in this case is no longer necessary and accordingly, they were granted bail.

(7) The learned counsel for the appellant submitted that in the present case, in the first place, offence under the Act of 1989 was not registered, when the FIR came to be registered on 10.12.2020. It was submitted that the grievance raised by the respondent No.2. i.e. the brother of the deceased is that there was dowry demand by the accused persons and that the deceased was harassed by the accused persons leading to registration of the aforesaid offences. It was submitted that, in the facts and circumstances of the present case, no purpose would be served by rejecting the present appeal, which may lead to the appellant being put behind bars, while co-accused persons have been already released on regular bail with the observation that their further custody was not necessary.

(8) The learned APP has relied upon the reply filed in the present appeal and he has opposed the prayer made in the appeal.

(9) We have considered the facts and circumstances of the present case. The FIR stood registered on 10.12.20220, but, initially offence under the Act of 1989 was not registered. The crux of the grievance raised by respondent No. 2 was with regard to alleged harassment meted out to the deceased by the accused persons,

including the appellant herein, which resulted in the death of the victim, leading to registration of the offences under the aforementioned provisions of the IPC and the Dowry Prohibition Act. It is an admitted position that offence under Section 3(2)(v) of the Act of 1989, was added later on.

(10) A perusal of the aforesaid provision shows that the offence alleged against the accused persons under the IPC, which is punishable with imprisonment for a term of ten years or more must have been committed against the victim, knowing that such a person is a member of Scheduled Caste or Scheduled Tribe. We find that there has to be an intention on the part of the accused person while committing such an offence under the IPC, which demonstrates that such offence was committed also because the victim belonged to the specific community.

(11) We find that in the present case, the son of the appellant had married with the deceased, who belonged to the aforesaid category of Scheduled Tribe/Schedule Caste. The crux of the allegation pertains to harassment meted out allegedly by the appellant, or her husband and her son to the deceased. *Prima facie* the nature of

allegations has its roots in alleged dowry demand and matrimonial dispute between the parties and *prima facie* it appears that in this case, so far as the appellant is concerned, the alleged acts of harassment can not be said to have been committed only because the deceased happened to belong to the Scheduled Caste/ Scheduled Tribe community.

(12) Even otherwise regular bail is already granted to the co-accused persons and while issuing notice, this Court had granted interim protection to the appellant.

(13) In view of the above, we are convinced that the present appeal deserves to be allowed. Accordingly, the appeal is allowed. The impugned order is quashed and set aside. The interim protection granted by the order dated 25.01.2021, to the appellant, stands confirmed.

[G.A.SANAP, J.]

[MANISH PITALE, J.]

Kavita