

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 90/2022

Narayan Natharam Sawant ..Versus...State of Maharashtra and anr

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. N.R.Tekade, Advocate for the appellant.
Mr. A.R.Chutke, APP for respondent/State
Ms. S.H.Bhatia, Advocate for respondent NO.2 to assist the prosecution.

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/06/2022

1] Heard Mr. Tekade, learned counsel for the applicant.

2] This an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, against the order dated 25.1.2022, whereby the application under Section 438 Cr.PC filed by the applicant has been rejected.

3] By an order dated 15.2.2022 notices were issued by this Court and by the order dated 1.3.2022 while observing that the decision of the matter will require perusal of the police diary, ad-interim protection came to be granted.

4] Today learned APP has produced the case diary for my perusal. He along with learned counsel Ms.Bhatia, who has been appointed for Respondent No.2, opposes the application for grant of bail and submits that on the same day

i.e. on 01.10.2021 another offence under Crime NO. 397/2021 has also been registered against the applicant, with Police Station Borgaon Manju under Sections 354, 376, 376(3), 376(b)(d) r/w Section 34 of the IPC and so also under Sections 3 to 8, 9(m) and 10 of the POCSO Act and therefore, the possibility of the applicant having indulged into the said act cannot be ruled out.

5] Mr. Tekade, learned counsel for the applicant submits that in Crime No. 397/2021, the applicant has already been released on the bail by the learned Sessions Court, Akola, by an order dated 6.1.2022 and therefore, the question of considering the same for the purpose of the present application does not arise and the application has to be decided on its own merit.

6] A perusal of the case diary and specifically the statement of the complainant Smt. Mangala Santosh Gawai, indicates the absence of the necessary ingredients prima facie as contemplated by Section 3(1)(r) & (s) of the SC & ST (Prevention of Atrocities) Act. As the investigation is going on, it would not be appropriate to discuss her statement in detail. Though in her supplementary statement she has named Bharat Moi and Nanda Gawai as being present on the spot at the time of the incident, however, the supplementary statement is after the FIR which in itself makes its credibility questionable, considering which a case for confirmation of the ad-interim order is made out.

7] Accordingly the application is allowed in terms of the ad-interim order dated 1.3.2022, which stands confirmed. No costs.

8] Appropriate fees be paid to the appointed counsel as per schedule.

JUDGE

Rvjalit