

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 173 OF 2022

Ramesh S/o Ramkrishna Lahamge,
Aged about 74 years, Occ.:- Agriculturist,
R/o.:- Alegaon, Tq. Patur, Dist. Akola.

.... **APPELLANT**

// VERSUS //

1. The State of Maharashtra,
through Police Station Officer,
Police Station Channi,
(S.D.P.O), Balapur.

2. Sau. Durga W/o Gajanan Dakhore,
aged about 32 years, Occ. Labourer,
R/o Pimpardoli, Tq. Patur,
Dist. Akola

.... **RESPONDENTS.**

Shri H.M. Mohta, Advocate for Appellant.

Shri Vinod Thakare, for Respondent No.1/State.

Shri S.N.Nandeshwar, Advocate for the respondent no.2.

CORAM : ANIL S. KILOR, J.

DATED : 28th APRIL, 2022.

ORAL JUDGMENT :

Heard.

2. **ADMIT.**

3. This is an appeal seeking pre-arrest bail in Crime No.
69 of 2022 registered on 4th March, 2022 with Police Station

Channi, Dist. Akola for the offences punishable under Section 354, 354-A, 509, 504 and Sections 3(2)(va), 3(1)(w)(i) and 3(1)(w)(ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "Atrocities Act").

4. Shri Mohta, learned counsel for the applicant submits that to avoid payment of Rs.5,000/- given by the applicant as a hand loan to the husband of the complainant, a false complaint came to be lodged by the complainant. It is submitted that there is counter First Information Report (FIR) filed by the wife of the applicant against the husband of the complainant and the same was registered as Crime No. 70 of 2022 with the same police station. It is submitted that the present FIR is a counterblast to the FIR filed by the wife of the applicant. He further submits that from the FIR, it can be seen that no *prima-facie* case is made out to show any involvement of the applicant particularly in the offence attracting Atrocities Act. He, therefore, submits that bar under Section 18 would not come in the way of the applicant to seek pre-arrest bail.

5. He further submits that contents of the FIR on its face value are sufficient to show that the applicant was not knowing the

caste of the complainant and even the complainant was not knowing the caste of the applicant and therefore provisions of Sections 3(1)(w)(i) and 3(1)(2)(ii) of Atrocities Act would not apply.

6. It is submitted that a false case has been lodged against the applicant who is 75 years of age. It is submitted that looking to the age of the appellant, the story of the prosecution is improbable. It is further submitted that intention is important to attract Sections 3(1)(w)(i) and 3(1)(w)(ii), which according to the learned counsel for the applicant is not mentioned in the First Information Report and the same is missing.

7. On the other hand, Shri Thakare, learned Additional Public Prosecutor strongly opposes the appeal and made the case diary available for perusal. Learned Additional Public Prosecutor submits that in view of the bar under Section 18 of the Atrocities Act, this Court cannot entertain this appeal moved by the appellant for grant of pre-arrest bail. He further submits that the contents of the FIR *prima facie* disclose the offence under the Atrocities Act. He further submits that the appellant and the complainant were

knowing each other and also they were knowing the caste of each other. He therefore, submits that even the ill-intention of the applicant can be seen from the contents of the FIR. In the circumstances, he submits that as there is sufficient incriminating material available on record, he prays for rejection of the present appeal.

8. Shri Nandeshwar, learned counsel appearing for the respondent no.2 reiterated the submission of the learned Additional Public Prosecutor and submits that the police station is at a distance of 20 kilometers from the place of occurrence and being a lady it was not possible to travel in the night and to lodge a report. He therefore, submits that there is no delay in lodging the FIR.

9. I have perused the case diary and also contents of the FIR.

10. At this stage Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 needs to be referred, which read thus:

“18. Section 438 of the Code not to apply to persons committing an offence under the Act – Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of

having committed an offence under this Act.”

11. It is a settled law that applicability of provisions of Section 438 of the Code of Criminal Procedure shall not apply to the cases under the Atrocities Act, 1989. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of Sections 1989, the bar created by Section 18(1), 18A(i) shall not apply.

12. In the light of the above referred well a settled principle of law, if the contents of the FIR of the present case is considered, it cannot be said that there is no *prima facie* case made out for applicability of the Act of 1989. The complainant/informant has stated in the complaint that there was an intention of the appellant to outrage her modesty.

13. Thus, there is sufficient material available on record to attract the provisions of the Atrocities Act, 1989. In that view of the matter, bar under Section 18 would come in the way of the applicant in this case to consider his prayer for grant of anticipatory bail. Accordingly, I pass the following order.

ORDER

- i. Criminal appeal is rejected.

JUDGE

S.K.Nair

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