

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

CRIMINAL APPEAL NO. 288 OF 2020

APPELLANT: Sou. Kiran Amol Chandanshiv,
Aged about 23 years,
Occupation: Household, r/o Wadad,
Tq. Malegaon, Dist. Washim.

...VERSUS...

RESPONDENTS 1. The State of Maharashtra,
through Police Station Officer,
Police Station Malegaon, Dist. Washim.

2. Shobha Manik Tajne,
Aged 50 years, Ocu: Agriculturist,
R/o Kalambeshwar, Tq. Malgaon,
Dist. Wahsim.

Shri R.S. Kurekar, Counsel for Appellant.
Shri M.J.Khan, APP for the Respondent No.1.

CORAM : ANIL S. KILOR, J.
DATE : 07/04/2022

ORAL JUDGMENT :

1. This is an appeal filed by the appellant challenging the order below Exh.1 dated 13/08/2020 passed by the learned Additional Sessions Judge, Washim in Misc. Criminal Application No. 266/2020, rejecting the application for grant of pre-arrest bail.

2. Heard the learned counsel for the appellant and the learned APP for respondent No.1. None for the respondent No.2, though served.

3. **Admit.**

4. On a complaint lodged by the complainant that, she was assaulted by the accused persons including the appellant and abused on her caste, Crime No. 342/2020 was registered with Police Station, Malegaon, District Washim for the offences punishable under Sections 294, 324, 506 read with Section 34 of the Indian Penal Code, 1860 and also under Sections 3(1)(r), 3(1)(s), 3(2)(va) the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the Atrocities Act'). Thereupon, the appellant moved an application for grant of pre-arrest bail before the learned Sessions Judge, Washim which came to be rejected vide impugned order dated 13/08/2020, which is under challenge in this appeal.

5. Shri Kurekar, learned counsel for the appellant submits that the FIR is the outcome of a dispute about a land and applicant has been falsely implicated in the alleged offence. It is submitted

that in the FIR, the name of the appellant was not mentioned. He therefore, submits that the appellant is entitled for grant of pre-arrest bail.

6. He has further argued that vide order dated 04/09/2020, this Court had granted ad-interim anticipatory bail and there is no complaint about abuse of concession granted to the appellant. He further submits that as there is no prima-facie incriminating material available against the appellant attracting the provisions of the Atrocities Act, bar under Section 18 of the Atrocities Act would not come in the way of the appellant.

7. On the other hand, Shri M.J.Khan, learned APP for the State opposes the present application and submits that injury report corroborates the prosecution story and though the name of the appellant is not there in the FIR, but in the statement of the witnesses recorded by the Investigating Officer, the witnesses have stated the name of the appellant. He thus submits that, in view of the sufficient material available on record to show involvement of the appellant in the alleged offence, he prays for dismissal of the present appeal.

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

9. After considering the statements of witnesses recorded by the Investigating Officer, during investigation, the allegations about the abuse on caste is attributed to one Sau Bhagirathi Ramesh Chandanshiv. There are no allegations against the appellant that, the appellant abused the complainant on her caste. Moreover, there is nothing on record to show that the appellant has committed the alleged offence only because the complainant belongs to a particular caste. Thus, prima facie, there is no incriminating material available on record to attract the provisions of the Atrocities Act against the appellant. In that view of the matter, the bar under Section 18 of the Atrocities Act would not come in the way of appellant, while considering the prayer of the appellant for grant of pre-arrest bail.

10. As far as other offences are concerned, the injury report show that the injuries are of simple nature and looking to the allegations made in the FIR, I am of the opinion that custody of the appellant is not necessary in this case for custodial interrogation.

11. In that view of the matter, I am of the considered view that the present appeal needs to be allowed. Accordingly, I pass the following order:

- i) The Appeal is **allowed**.
- ii) The order below Exhibit No.1 dated 13/08/2020 passed by the learned Additional Sessions Judge, Washim, in Misc. Criminal Application No.266/2020, is hereby quashed and set aside.
- iii) The order dated 04/09/2020 granting ad interim anticipatory bail to the appellant is confirmed with modification that the appellant shall attend the concerned Police Station as and when his presence is required.

The appeal is accordingly **disposed** of.

[ANIL S. KILOR, J.]

rkn