

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

CRIMINAL APPEAL NO.307 OF 2020

Sayara Bano Sheikh Israi,
Aged about 48 years, Occ. Household,
R/o Sarkari Fail, Shegaon, Tq. Shegaon, Dist. Akola. ... Appellant

// VERSUS //

1. The State of Maharashtra,
Through P.S.O. Shegaon, Tq. Shegaon,
District Akola.
2. Devanand S/o Pundlik Umale
R/o Sarkari Fail, Shegaon, District Buldhana ... Respondents

Shri A.P. Tathod, Advocate for Appellant.
Shri M.J. Khan, A.P.P. for the Respondent No.1/State.
Shri Pushkar Deshpande, Adv. h/f Shri R.G. Kavimandan, Adv. for the
Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : 23rd MARCH, 2022.

ORAL JUDGMENT

Heard Shri Tathod, learned counsel for the appellant, Shri Khan, learned A.P.P. for the respondent No.1/State and Shri Pushkar Deshpande, learned counsel for the respondent No.2.

2. **ADMIT.**

3. This appeal is arising out of the order below Exh.1, dated 29.06.2020, passed by the Special Judge, Khamgaon, District Buldhana in ABA. No.226 of 2020, rejecting the pre-arrest bail application of the appellant.

4. The appellant is praying for pre-arrest bail in Crime No.256 of 2019, dated 02.06.2019, registered with Police Station Shegaon, District Buldhana, for the offences punishable under Sections 324, 504, 506, 354-D read with Section 34 of the Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offence, Act, 2012 (hereinafter referred to as "POCSO Act") and Section 3(i)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Atrocities Act").

5. Shri Tathod, learned counsel for the appellant took me through the contents of the FIR and submits that none of the offences attracts against the appellant even if the allegations made in the FIR are taken on its face value. It is submitted that the main accused, who is the son of the appellant, has already been arrested.

6. I have perused the Case Diary and also the contents of the FIR.

7. The only allegation against the appellant is that she abused the complainant. There is no mention of words uttered by the appellant while abusing the complainant or his family members. There are no allegations that the appellant abused the complainant or his family members on their caste. Similarly, there are no allegations that the appellant abused the complainant only for the reason that the complainant belongs to scheduled caste.

8. In the circumstance, as *prima facie* there is no incriminating material available against the appellant to attract the provisions of the Atrocities Act, the bar created under the Atrocities Act would not apply to this case.

9. As far as the other offences are concerned, there is nothing to attribute any role of the appellant in the alleged offence.

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

- a) The Criminal Appeal is **allowed**.
- b) The order dated 29.06.2020, passed below Exh.1, by the learned Special Judge, Khamgaon, District Buldhana in ABA No.226 of 2020 is quashed and set aside.
- c) The order passed by this Court on 11.08.2020, granting *ad-interim* anticipatory bail, is confirmed.
- d) The appellant shall attend the concerned Police Station as and when her presence is required.

The Criminal Appeal stands **disposed of** accordingly.

[ANIL S. KILOR, J.]