

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

CRIMINAL APPEAL NO. 548 OF 2022

Akash S/o. Keshav Ugle

...VERSUS...

State of Maharashtra thr. PSO, PS Khambaon Gramin, Tq. Khamgaon, Distt. Buldhana and anr.

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

Court's or Judge's order

Shri S.K.Wankhade, Advocate for appellant.
Shri I.J.Damle, APP for respondent no. 1/State.

CORAM : SMT. M. S. JAWALKAR,J.

DATE : 26rd SEPTEMBER, 2022.

The present appeal is filed by the appellant being aggrieved by the order dated 02/08/2022 passed by the learned Additional Sessions Judge, Khamgaon, District Buldhana in ABA No. 371/2022, by which, the anticipatory bail came to be rejected.

2. I have heard the learned counsel appearing for the appellant as well as Shri I.J.Damle, learned Asst. Public Prosecutor for respondent no. 1/State.

3. It is pointed out by the learned counsel for the appellant that the appellant is 19 years old and he is taking education. His application for grant of anticipatory bail came to be rejected on the ground that the offence is registered under various Sections of SC/ST (Prevention of Atrocities Act), there is clear bar of Section 18 in the said Act for Section 438 of Cr.P.C. and therefore, anticipatory bail came to be rejected.

4. The learned counsel for the appellant submits that the appellant was not having any knowledge that the victim was belonged to SC Category. He is college going student and if anticipatory bail is not granted to him, his carrier would spoil. He is ready to co-operate with the Police Authority and will attend the Police Station as and when required.

5. The learned Asst. Public Prosecutor has placed on record the case diary. I have perused the same. None of the statements discloses that the victim belongs to Chambhar Caste except Admit-cum-Living Certificate, which shows the caste as "Chambhar". If Section 3(1)(w)(i) is perused, to which the appellant is charged with, "there has to be intention while touching a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent." None of the statements recorded by the Police Authority refers the caste of woman except the school leaving certificate collected by Investigating Officer.

6. In my considered opinion, prima facie, there is no evidence to show that the appellant was having knowledge that the victim was belonged to Chambhar community. As such, if it is presumed that such act is committed, prima facie, it cannot be said to have committed with knowledge that the victim was belonging to "Chambhar" caste. Hence, I am satisfied that the order passed by learned Additional Sessions Judge rejecting application for anticipatory bail is liable to be set aside. Accordingly, I pass the following order:-

ORDER

- i) The Criminal Appeal is allowed.
- ii) The order dated 02/08/2022 passed by the learned Additional Sessions Judge, Khamgaon, District Buldhana in ABA No. 371/2022 is hereby set aside.
- iii) In the event of arrest, the appellant Akash S/o. Keshav Ugle be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of learned Sessions Court.
- iv) The appellant shall attend Police Station, Khambaon (Rural) on every Monday between 11.00 a.m. to 05.00 p.m. till charge-sheet is filed and co-operate with the police authority.
- v) The appellant shall not tamper with the prosecution witnesses and shall not leave the jurisdiction of the concerned Police Station without permission of the Court.

The Criminal Appeal is disposed of accordingly.

(Smt. M.S. Jawalkar, J.)

B.T.Khapekar