

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

CRIMINAL APPEAL NO.544 OF 2022

Raj @ Zahir Ahmed Nasir Ahmed,
 Aged about 42 years,
 Occu: Civil Contractor,
 R/o Plot No.16, Smruti Nagar,
 Second Railway Crossing,
 Koradi Road, Nagpur,
 Tq. Nagpur, Dist. Nagpur. **APPELLANT**

...V E R S U S...

1. State of Maharashtra, through
 Police Station Officer,
 Police Station Imamwada,
 Nagpur, Tq. Nagpur,
 Dist. Nagpur.
2. XXX,
 Victim in Crime No.199/2022,
 Police Station Imamwada,
 Nagpur, Tq. Nagpur,
 Dist. Nagpur. **RESPONDENTS**

 Mr. Mir Nagman Ali, Advocate for Appellant.
 Mr. T. A. Mirza, APP for Respondent 1/State.
 Ms. Deepali Sapkal, Advocate (Appointed) for Respondent 2.

CORAM: **ROHIT B. DEO AND URMILA JOSHI-PHALKE, JJ.**
DATE: **6th DECEMBER, 2022.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

This appeal is directed against the refusal of the

learned Additional Sessions Judge, Nagpur to consider the application preferred by the appellant – accused for grant of pre-arrest bail in Crime 199/2022 registered with Police Station Imamwada, Nagpur for offence punishable under sections 376, 511, 323 of the Indian Penal Code and section 3 (1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The appellant was granted interim protection vide order dated 21.09.2022. Certain conditions were imposed. It is not the case of the prosecution that the conditions of interim protection are not complied with.

3. While we consciously refrain from making any definite observation, we have already noted while granting pre-arrest protection that the report is lodged six days after the alleged incident. The case of the prosecutrix is that on the fateful day the appellant came to her house and consumed liquor with her husband. The husband went out to buy mutton and taking disadvantage of his absence the appellant attempted forcible sexual intercourse. The prosecutrix has filed an affidavit in response in which she claims that the appellant – accused and the

prosecutrix developed friendly relationship since the appellant promised to secure job for her at MIHAN and it was later on that he got acquainted with her husband.

4. Be that as it may, we do not think that the investigation shall be hampered if the interim protection is confirmed. In so far as the offence punishable under the Atrocities Act, *prima facie* we are not persuaded to hold that the said penal provisions are attracted. This of course is a *prima facie* observation made solely for the purpose of deciding the pre-arrest bail application.

5. We confirm the interim order dated 21.09.2022 with the modification that the attendance in the Police Station shall be till the filing of the charge-sheet.

6. We further put the appellant on notice that if any attempt is made to influence or threaten the prosecutrix or any other witness, the same shall be viewed extremely seriously and may entail withdrawal of the interim protection.

7. The appeal is allowed in the aforestated terms.

8. The fees of the learned appointed counsel Ms. Sapkal be quantified and paid in accordance with the rules.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

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