

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

CRIMINAL APPEAL NO. 510 OF 2021

Shaikh Rauf Shaikh Lal,
aged about 48 years, Occ: Labour,
R/o Kumbhari, Akola, Tq. & Dist.
Akola.

.... **APPELLANT.**

// **VERSUS** //

1. The State of Maharashtra,
Through P.S.O. P.S. MIDC,
Akola, Tq. & Distt. Akola.
2. Sau. Vanita W/o. Gajanan Sutar,
Aged about 45 years, Occ. : Labour,
R/o. Kumbhari, Tq. & Dist. Akola. ... (Complainant)

.... **RESPONDENTS.**

Shri S.A.Mohta, Advocate for Appellant.
Shri M.J.Khan, A.P.P. for the respondent.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 07, 2022.

ORAL JUDGMENT :

1. Heard learned counsel for the appellant and the learned A.P.P. for the respondent No.1/State.

2. Shri Futane, learned counsel appearing for the respondent No.2 informs that inspite of repeated requests the respondent No.2 failed to provide necessary information to him.

3. Though the respondent No.2 was served long back and she has engaged a lawyer of her choice, she failed to give proper instructions in this matter to her counsel. However, looking to the fact that the appellant is seeking pre-arrest bail, I proceed further in the matter to decide the appeal.

4. **ADMIT.**

5. In this appeal a challenge is raised to the order dated 19/11/2021 passed by Additional Sessions Judge, Akola in Misc. Criminal Application No.1008 of 2021, rejecting application for grant of pre-arrest bail.

6. On a complaint made by the complainant that the accused abused the complainant on her caste and threatened her and her family with dire consequences if the land is not vacated, Crime No. 797 of 2021 was registered with Police Station, M.I.D.C., Akola for the offences punishable under Section 504 and 506 of the Indian Penal Code and under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act”).

7. Thereupon the appellant moved an application for grant of pre-arrest bail, which came to be rejected vide impugned order dated 19/11/2021, which is assailed in the present appeal.

8. Shri Mohta, learned counsel for the appellant submits that a decree was passed in favour of the appellant and against the husband of the complainant, thereupon, through Court, the land on which the complainant and her husband were residing, got vacated.

9. It is submitted that the F.I.R. in question is the outcome of the said dispute about the land. He has pointed out that there was no complaint made for about 11 days after the alleged incident and he has been falsely implicated in the alleged offence.

10. He further submits that there is no material available on record to show that any alleged offence was committed by the appellant attracting the provisions of the Atrocities Act. He, accordingly, submits that in absence of any such material, the bar under Section 18 of the Atrocities Act for grant of pre-arrest bail would not come in the way of the appellant in this case.

11. The learned A.P.P., on the other hand, opposes the present appeal and submits that the learned trial Court has rightly rejected the application for grant of pre-arrest bail of the appellant.

12. I have perused the case diary and also the contents of the F.I.R.

13. The contents of the F.I.R. are sufficient to show that the decree of the Civil Court was executed on 05/10/2021 by the applicant and the land on which the complainant and her husband were residing got vacated. Thus, *prima-facie*, it appears that there was a dispute about the land and the appellant has obtained decree against the husband of the complainant which was executed on 05/10/2021.

14. Furthermore, there was no complaint lodged for about 11 days after the alleged incident. In addition to that there is no independent witness to the incident, particularly to corroborate the allegations attracting the provisions of the Atrocities Act. In that view of the matter, I am of the opinion that in this case the bar under Section 18 of the Atrocities Act would not come into play in absence of the *prima-facie* incriminating material available against the appellant.

15. Having considered the allegations made in the F.I.R., I am of the opinion that the custodial interrogation of the appellant is not necessary in this case. Accordingly I pass the following order:

- i) The Criminal Appeal is allowed.
- ii) The order dated 19/11/2021 passed by learned Additional Sessions Judge(Special Court for Cases under POSCO Act), Akola in Misc. Criminal Application No.1008 of 2021 is hereby quashed and set aside.
- iii) The order dated 3rd December 2021 granting ad-interim anticipatory bail is hereby confirmed with modification that the appellant shall attend the concerned Police Station, as and when his presence is required.

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

(ANIL S. KILOR, J)

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