

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

CRIMINAL APPEAL NO.856 OF 2019

Rajeshwar @ Kailash Ramdas Kale

VS.

The State of Maharashtra, through PSO, PS Khamgaon Rural, Buldhana and another

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Shri Shaharukh Shah, Advocate h/f Shri M.N. Ali, Advocate for the appellant.

Shri M.J. Khan, APP for the respondent No.1/State.

Shri Gopal G. Mishra, Advocate for the respondent No.2/State.

CORAM : G. A. SANAP, J.

DATE : 26.08.2022

1. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as Atrocities Act) 1989, challenging the order dated 21.12.2019 passed by the learned Additional Sessions Judge, Khamgaon, whereby the anticipatory bail application made by the appellant was rejected.

2. Learned Advocate for the appellant submitted that no *prima-facie* case has been made out to attract the provisions of Section 3 (1)(r)(s) of the Atrocities Act, 1989 in this case. Learned Advocate pointed out that the report lodged by the informant was by way of counter blast to the report lodged by the daughter of the appellant. Learned Advocate submitted

that in this case, bar under Sections 18 and 18-A of the Atrocities Act, 1989, would not apply.

3. Learned APP for the respondent No.1/State submitted that learned Additional Sessions Judge has recorded the cogent reasons for rejecting the application. Learned APP submitted that allegations in the First Information Report are sufficient to attract the bar provided under Sections 18 and 18-A.

4. Learned Advocate for the respondent No.2 submitted that this appeal is not at all maintainable. In the submission of learned Advocate for the respondent No.2 the allegations recorded in the First Information Report clearly indicate the commission of offence under Atrocities Act, 1989.

5. Perusal of the record would show that this Court vide order dated 24.12.2019 had granted a protection to the appellant from arrest in this case. This Court has categorically recorded the facts vis-a-vis the report lodged by the daughter of the appellant against the respondent No.2, prior to this report. The offence registered on the report of daughter of appellant was relating to her sexual harassment.

6. With the assistance of the learned Advocates for the parties, I have gone through the facts recorded in the First Information Report. Perusal of the First Information Report would clearly indicate that basic ingredients of the offence

under Section 3 (1)(r)(s) have not been spelt out. It is to be noted that while deciding the application for anticipatory bail, *prima-facie* analysis of the First Information Report is necessary. On perusal of the First Information Report, it *prima-facie* indicates that basic ingredients are not made out. Therefore, objection on the ground of maintainability in such matter loses of its significance.

7. In view of the facts and circumstances, I am of the view that bar under Sections 18 and 18-A would not stand in the way of the appellant. In the facts and circumstances, the appeal deserves to be allowed.

8. Hence, the appeal is allowed. The impugned order dated 21.12.2019 passed by the learned Additions Sessions Judge, Khamgaon rejecting the anticipatory bail application is set aside. The order granting ad-interim anticipatory bail vide order 24.12.2019 stands confirmed on same terms and conditions.

9. The Criminal Appeal is disposed of.

JUDGE

manisha
Signed By: MANISHA ALOK
SHEWALE

Signing Date: 26.08.2022 18:05