

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.980 OF 2022

YOGESH KISHOR BORDE
VERSUS
ALKA RAJENDRA GHODECHOR AND OTHERS

...
Advocate for Appellant : Mr. T. C. Shinde
Advocate for Respondents : Mr. L. M. Kulkarni
...

CORAM : R.M. JOSHI, J

DATE : JULY 28, 2023

PER COURT :

1. This appeal is filed under Section 14(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "**the Act**") taking exception to the order of grant of anticipatory bail by the learned Additional Sessions Judge, Nevasa, Dist. Ahmednagar in Criminal Bail Application No. 379/2022.

2. The informant seeks cancellation of bail on the grounds that learned Additional Sessions Judge has not considered the allegations of first information report and the relevant provisions of the Act and that there is no reasons recorded for grant of bail in connection with offence punishable under Section 3(1) (w)(i) of the Act.

3. As far as Respondent No. 1 is concerned, admittedly there is no allegation against her of abusing or insulting informant over his caste. Similarly, other offences alleged against her are bailable and hence, there is order of grant of pre-arrest bail to her. In such circumstances, no interference is called therein.

4. In so far as Respondent No 2 regarding alleged abuse of the informant over his caste, learned Additional Sessions Judge has rightly appreciated the *prima facie* material on record and by following the dictum of Apex Court in case of Hitesh Verma Vs. State of Uttarakhand, 2020(10) SCC 710, has held that *prima facie* such offence is not made out.

5. It is the contention of learned Counsel for the Appellant that for the purpose of determining the applicability of Section 3(1)(w)(i) intention of the accused need not be taken into consideration and mere knowledge of the accused about the caste of the woman and touch to her is sufficient to constitute an offence. To support the said contention, he placed reliance on the judgments of Hon'ble Apex Court in case of Bachu Das Vs. State of Bihar, 2014 AIR (SCW) 1668 &

Asharfi Vs. State of Uttar Pradesh, 2018 All. M.R. (Cri) 1365. It is his further contention that this aspect is not taken into consideration by Sessions Court and hence, order of grant of bail cannot sustain.

6. This being appeal, provisions of Section 3 & 6 would apply and it is within the power of Appellate Court to consider the material available on record and to cause interference, if any, in impugned order. There is no dispute about the fact that investigation is complete and charge-sheet has been filed before competent Court.

7. In order to hold that *prima facie* offence punishable under Section 3(1)(w)(i) is made out against Respondent No. 2, it is necessary to consider the essential ingredients which would constitute such offence. The relevant provision reads thus:

3(1)(w)(i): intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribes, 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:

Perusal of this provision indicates that there must be intentional touch and which should be sexual in nature. It is thus clear that mere touch in absence of sexual intention is not an offence. In order to attract this offence there must be *prima facie* reliable material available from record.

8. Perusal of charge-sheet shows that informant himself in his statement recorded under Section 164 Cr.P.C has clearly stated that his wife was also assaulted and she was thrashed on the floor. Except for this, there is absolutely no statement by him with regard to the alleged inappropriate touch with sexual intention. The contention of learned Counsel for the Appellant that mere knowledge of accused of caste of informant would be sufficient to attract offence under the Act, cannot be accepted. In the instant case, for want of presence of essential ingredients to constitute offence punishable under Section 3(1)(w)(i), no offence is made out against Respondent No. 2. Having regard to the fact, no offence is made out under Act, bar of Section 18 does not attract to present case.

9. Learned Additional Session Judge *prima facie* has rightly taken into consideration entire circumstances as they appear from the FIR as well as the statements on record and granted pre-arrest bail. In such circumstances, there is no substance in the Appeal. Hence, it must fail. Resultantly, appeal stands dismissed.

(R.M. JOSHI, J.)

Malani