

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 501 OF 2023

Shilanath R. Tiwary

...Appellant

Versus

State Of Maharashtra And Anr.

...Respondents

....

Mr.Saurabh D Butala Advocate for Appellant.

Ms. Manisha Deokar Appointed Advocate for Respondent no.2.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th JUNE 2023.

P.C.:-

1. This is an appeal u/s.14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act challenging the order dated 27th March 2023 passed by Additional Sessions Judge, Thane below Exhibit-1 in Criminal Bail Application No.766 of 2023 rejecting the application for anticipatory bail.
2. Appellant is apprehending arrest in C.R No.I-48 of 2023 registered with Shreenagar Police Station, Thane for offences under Sections 354, 354A of IPC and u/s.3(1)(w)(i) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as `Atrocities Act').
3. The prosecution case is that complainant belongs to Scheduled Caste and she was employed at Smart Pvt.Limited, a security agency as a Security Guard and was stationed at Centram Building, I.T.Park, Wagale Estate, Thane where appellant was employed as Security Manager. During the course of her duties appellant used to harass her and make comments

against her. On 29th January 2023 while complainant was proceeding towards staff room, the accused approached her when she was on staircase accused touched the logo on security guard dress situated on her chest and told her to keep the logo clean and outraged her modesty. He also demanded sexual favour and threatened her that she would be removed from job. On 30th January 2023 the complainant had quarrel with staff and there was exchange of words between them. In the afternoon at the instance of accused, she was told by area manager to give written note about the incident. She wrote about it on paper and gave it to Area Manager. In the evening the accused called her in staff room and other staff were asked to leave the room. He made inquiry about the incident with her and told her to obey his instructions. In the evening she was informed that she has been removed from job.

4. Appellant preferred application for anticipatory bail before the Court of Sessions, at Thane. The said application was rejected vide order dated 27th March 2023.

5. Learned advocate for appellant submitted that FIR has been registered with mala fide intentions to falsely implicate the appellant in the crime. Although alleged incident had occurred on 29th January 2023, the FIR was lodged on 21st February 2023. The inordinate delay has not been explained. Appellant was employed as Security Manager. By way of disciplinary action services of complainant were terminated on 30th January 2023. The complainant had submitted a declaration giving explanation about performance of her duty. The bar u/s.18 of Atrocities Act would not be attracted. On 29th January 2023 appellant was not on duty which is evident from the letter dated 27th April 2023 issued by Centrum I.T Park Co-op.Society Premises Society Ltd certifying that records indicate that biometric attendance data shows that appellant was on weekly off on 29th January 2023. He was not present on the site.

6. Learned APP submitted that FIR makes out offence u/s.3(1)(w)(i) of the Atrocities Act and the appellant is not entitled for the relief in the nature of anticipatory bail. During the course of investigation statements of two witnesses were recorded who had stated that they had similar grievance against appellant and they were removed from services.

7. Learned advocate for Respondent no.2 submitted that version of complainant cannot be disbelieved. She has attributed overt act to the appellant having committed the offence. The contention of the appellant that he was not present on duty, cannot be considered at this stage. The statements of two witnesses mentions that similar acts were committed by appellant. The complainant was continuously visiting police station, however, her complaint was not recorded. The security agency had assured her that action would be taken against accused and hence there is delay in lodging the FIR.

8. Undisputedly appellant was working as Security Manager and complainant was working as Security Guard. Complainant was removed from services from 30th January 2023. Before initiating action the complainant has executed declaration letter regarding incident of quarrel with co-employee. In the FIR lodged on 21st February 2023 after a period of about 20 days it is alleged that incident had occurred on 29th January 2023. Appellant has also contended that he was not on duty on 29th January 2023. Reliance is placed on letter issued by Centrum I.T.Park Co-op. Premises Society stating that appellant has been working as society manager since July-2021 and as per their records and biometric attendance attached, appellant had a weekly off on 29th January 2023. He was not present on site. Perused the statement of two witnesses recorded during the course of investigation. It is pointed out by learned counsel for appellant that memo was issued against said witnesses who were employed as security guard. Statements of these two witnesses indicate that they

were removed from service in January-2023. Their statements were recorded on 5th March 2023. Although they have alleged that they were similarly harassed by accused, considering the fact that they were removed from service, their versions speaks volumes of doubts. Their grievance is reflected after period of three months. The complaint suffers from mala fides.

9. In the facts of the case, bar u/s.18 of the Atrocities Act would not be attracted and there is no impediment to grant anticipatory bail to the appellant.

ORDER

- (i) Criminal Appeal No.501 of 2023 is allowed and disposed off;
- (ii) Impugned order dated 27th March 2023 passed by Additional Sessions Judge, Thane below Exhibit-1 in Criminal Bail Application No.766 of 2023 is quashed and set aside;
- (iii) In the event of arrest of appellant in connection with C.R No.0048 of 2023 registered with Shreenagar Police Station, Thane, the appellant be released on bail on his executing PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (iv) The appellant shall report Investigating Officer on 3rd, 4th, 5th and 6th July 2023 between 11.00 am and 1.00 noon and thereafter as and when called for till filing of charge sheet.

(PRAKASH D. NAIK, J.)

MST