

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 821 OF 2023

Niharika Tushar Athawale

...Appellant

vs.

The State of Maharashtra
and Anr.

...Respondents

Mr.Sandesh V. More a/w Hitendra Gandhi - Advocate for the
Appellant

Mr. H. J. Dedhia - APP for the Respondent-State

None for appointed Advocate for Respondent no. 2.

CORAM : S. M. MODAK, J.

DATE : 12th DECEMBER, 2023

P. C. :-

1. Heard learned Advocate for the Appellant and learned APP.
2. The Appellant is already granted interim protection as per Order dated 25/07/2023 passed by the Division bench.
3. During pendency of this appeal, the Police have already filed charge-sheet and now case is numbered as Special case No. 37 of 2023. The offence is under Sections 323, 506 read with 34 of the Indian Penal Code and under Section 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention

of Atrocities) Act.

4. When appeal was filed at that time charge-sheet was not filed. This was not circumstance available before the trial Court.

5. It is true that under the provisions of anticipatory bail for the offence under SC and ST Act, the Court has to see whether *prima facie* allegations are there or not. The charge-sheet is filed. It indicates that Police have collected sufficient material but Court cannot overlook one fact that charge-sheet is filed without arrest of the Appellant as her custody is not required. She is also pregnant carrying out eight months pregnancy. It is mentioned in the report submitted by the Sub-Divisional Officer Mahad. The same is taken on record and marked as "Annexure-X".

6. In view of that following order is passed:-

ORDER

(i) Appeal is allowed.

(ii) Order dated 10/07/2023 passed by Additional Sessions Judge, Mangaon-Raigad in the matter of C.R. No. 155 of 2023, registered with Mahad City Police Station, Raigad is set aside.

(iii) Order dated 25/07/2023 passed by the Division bench is confirmed.

7. Learned appointed advocate for Respondent No. 2 be paid fees as per the Rules.

[S. M. MODAK, J.]