

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

CRIMINAL APPEAL NO. 52/2023

Kaushal Maheshkumar Gupta,
Aged 38 yrs., Occ. Labour,
R/o. Behind Balaji Mandir,
Sakkarsath, Amravati,
Dist. Amravati.

APPELLANT

VERSUS

1. State of Maharashtra,
through its Police Station,
In-charge/Inspector, Police Station,
Sita Buldi, Dist. Nagpur.
2. XYZ (Victim)
Crime no. 253/2020,
through its Police Station In-charge/
Inspector, Police Station Sitabuldi,
Dist. Nagpur.

RESPONDENTS

Mr. Y. J. Sheikh, Advocate for appellant.
Mr. V. A. Thakare, APP for respondent No.1.
Mr. A. R. Prasad, with Mr. R. R. Tiwari, Advocate for respondent No.2.

CORAM

: VINAY JOSHI AND
BHARAT P.

DESHPANDE JJ.

DATE OF JUDGMENT

: 21.03.2023

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. The appellant orally seeks leave to add prayer for setting aside the

order dated 23.12.2022 passed in Criminal Bail Application No. 2732/2022.

3. Leave is granted. Amendment be carried out forthwith.

4. This is an appeal in terms of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1980 ('SC and ST Act') raising a challenge to the rejection of pre-arrest bail by the Trial Court. Initially, the Crime No. 253/2020 was registered against the appellant and others for the offence punishable under Sections 354(A), 354(B), 506 read with Section 34 of the Indian Penal Code. Apprehending arrest in said crime, the appellant has applied to the Trial Court for pre-arrest bail in terms of Section 438 of the Code of Criminal Procedure ('Code'). Considering the application on merits, the Trial Court has granted pre-arrest protection vide order dated 22.07.2022. Thereafter, informant made several complaints to the Police for addition of the provisions under the SC and ST Act as well as Section 376 of the Indian Penal Code. In pursuance of that the Police called an opinion of Law Officer and on that basis added the provisions of Section 376 read with Section 511 of the Indian Penal Code and provisions under the SC and ST Act. In turn, the State has moved to the Trial Court for cancellation of bail purely on the ground that there has been addition of penal provisions and therefore, bail needs to be cancelled. In that regard, reliance was placed on some

decisions to contend that after addition of penal provisions, for arrest of accused bail needs to be cancelled in terms of Section 439(2) of the Code. Having regard to the addition of penal provision, bail was cancelled on 14.10.2021. Perusal of said order indicates that the Trial Court has not considered the appellant's entitlement for pre-arrest bail on merits, however as penal section have been added, the bail was cancelled. In-turn, on addition of penal provision under the SC and ST Act and Section 376 read with Section 511 of the Indian Penal Code, the appellant has again applied to the Trial Court for grant of pre-arrest protection. In the circumstances, the Trial Court ought to have considered the bail application on its own merits with regard to the additional penal provisions. However, the Trial Court vide its order dated 23.12.2022 has declined to entertain the bail application on merits.

The relevant observations made in para 9 read as below:-

“9. In the above backdrop, the question is whether the present anticipatory bail application is maintainable when his anticipatory bail is cancelled by this Court. It is not the case that his anticipatory bail is rejected and he is filing this application after change in circumstances. It is to be noted that applicant is seeking anticipatory bail after filing of the charge-sheet and after cancellation of anticipatory bail. In the meanwhile, applicant was absconding and therefore, charge-sheet is filed under Section 299 of the Cr. P. C. The order of cancellation of bail was never challenged. Therefore, this Court is not supposed to review its own order of cancellation of bail. The other accused have surrendered and released on bail. Therefore, present applicant who was absconding cannot ask for bail much less anticipatory bail as of right. Filing of charge-sheet in this case cannot be treated as change in circumstances since his earlier application was not rejected but cancelled.”

5. It is evident that the Trial Court was under assumption

that the bail was already cancelled, there was no change in circumstances rejecting the bail. As as matter of fact, on addition of penal provisions, the Trial Court ought to have considered the appellant's entitlement for pre-arrest bail on its own merits. Thus, rejection dated 23.12.2022 is on technical front which is not in accordance with law. In the result, there is no assessment of the appellant's entitlement for bail after addition of penal provisions which exercise needs to be undertaken.

6. In the circumstances, we deem it appropriate to direct the Trial Court to entertain Criminal Bail Application No. 2732/2022 on its own merits, obviously after taking into account the provision of Section 18 of the SC and ST Act.

7. In view of above, we hereby quashed and set aside the order of rejection of bail in Criminal Bail Application No. 2732/2022, dated 23.12.2022. We hereby direct the Trial Court to take the said application on Board and decide the same on its own merits.

8. Both sides are directed to appear before the Trial Court on 27.03.2023 without notice. The Trial Court as per convenience, fix the date and decide the matter on its own merits within a period of two weeks from the date of hearing.

9. Since from the date of rejection of anticipatory bail on 14.10.2021 till date, there is no arrest and charge-sheet has already been filed, we deem it appropriate to continue interim protection till disposal of Criminal Bail Application No. 2732/2022.

10. Appeal stands disposed of in above terms.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane