



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

Criminal Appeal No.502 of 2023

Guddu @ Azhar Khan and another

vs.

State of Maharashtra, through PSO Dharni, District Amravati and another

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. N.P. Singhania, Advocate for the Appellants.
Mr. S.M. Ghodeshwar, A.P.P. for Respondent No.1/State.
Mrs. Anuprita Mishrikotkar, Advocate for Respondent No.2.

CORAM : M.W. CHANDWANI, J.
DATE : 6th SEPTEMBER, 2023.

Heard the learned Counsel for the appellants as well as the learned A.P.P. for respondent No.1/State and the learned Counsel appearing for respondent No.2.

02] **Admit.**

03] Anticipatory bail application of the applicants having been rejected by the learned Sessions Court vide its order dated 15/07/2023, the present appeal came to be filed.

04] Before proceedings to deal with the appeal, the learned Counsel for the appellants submits that he does not press the appeal on behalf of appellant No.1. Thus, this appeal is restricted with regard to appellant No.2.

05] It is the case of the prosecution that since the informant is belonging to Scheduled Tribe, the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*hereinafter referred to as "the Act" for short*) are made applicable in

this case. It is well enunciated by the judicial pronouncement that if the appellant is able to show that there is no *prima facie* case for applicability of Sections 3(1) and 3(2) of the Act, the bar under Sections 18 and 18A of the Act will not be applicable.

06] It is the common ground that appellant No.2 is a member of Scheduled Caste community. Sections 3(1) and 3(2) of the Act are applicable to a person, who is not a member of the Scheduled Castes or Scheduled Tribes community. Appellant No.2 being the member of Scheduled Caste, Sections 3(1) and 3(2) of the Act will not be applicable to appellant No.2. Therefore, I am of the view that the bar under Sections 18 and 18A of the Act will also not be applicable to the case of appellant No.2.

07] The learned A.P.P. for the State filed his reply and vehemently opposed the prayer for granting anticipatory bail to the appellants.

08] Coming to the merits of the case, it is alleged that the informant, who belonged to the Scheduled Tribe, was going on her field. The appellants came there and took the informant forcefully towards a bridge and appellant No.2 asked her that she should talk with him. Therefore, on the complaint of the informant, offences under Sections 354, 354A, 354B and 365 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Act came to be registered against the appellants.

09] There is one day delay in lodging the F.I.R. The main allegations are against appellant No.2. Considering the nature of allegations, the punishment prescribed for the alleged offence under Sections 354, 354A, 354B, and 365 of the Indian Penal Code and the

nature of allegations against appellant No.2, a case is made out for anticipatory bail. Accordingly, the appeal is partly allowed.

- i. The order dated 15/07/2023 in Criminal Application [BA] No.334/2023 in respect of appellant No.2 is set aside.
- ii. The application for anticipatory bail of appellant No.2 is allowed.
- iii. In the event of arrest of appellant No.2-Sagar Ravindra Wankhade in Crime No.380/2023, registered with Police Station Dharni, District Amravati (Rural), he shall be released on bail on his furnishing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one solvent surety in the like amount before the trial Court.
- iv. The appellant shall attend the concerned Police Station on every Monday for two weeks and cooperate with the investigation.
- v. The appeal of appellant No.1-Guddu @ Azhar Khan is dismissed as withdrawn.
- vi. The Secretary, High Court Legal Services Sub-Committee, Nagpur to quantify and release the professional fee to the learned Counsel appearing on behalf of respondent No.2/victim, as per rules.
- vii. The application is disposed of in the aforestated terms.

JUDGE