



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

CRIMINAL APPEAL NO.618 OF 2023

Adarsh s/o Sureshrao Pote
Age 29 years, Occupation – Labour,
R/o. Baripura, Nandgaon-peth,
Tq. and District Amravati

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Gadge Nagar,
District Amravati
2. XYZ
Victim in Crime No.930/2023
Registered with P.S. Gadge Nagar,
Amravati

...RESPONDENTS

Mr. S.B. Gandhe, Advocate for the appellant.
Mr. A.G. Mate, Advocate for respondent No.1/State.
Mr. A.N. Darunde, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : DECEMBER 07, 2023.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for
the parties.

2. By preferring this appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant has challenged the order dated 04/09/2023 passed in Criminal Bail Application No.987/2023 whereby the Additional Sessions Judge-2, Amravati has rejected the anticipatory bail application of the present appellant.

3. The appellant is apprehending arrest at the hands of police as Crime No.930/2023 is registered against the present appellant on 18/07/2023 at police station Gadge Nagar, Amravati for the offence punishable under Sections 376(2)(n) of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989' for short).

4. Heard learned Counsel for the appellant. He submitted that the present appellant is prosecuted on the basis of report lodged by the victim girl on an allegation that she got acquaintance with the present applicant when she was working in one Shraddha family shop. It is alleged by the victim that the present applicant has promised her for marriage and subjected her for sexual assault. Victim girl was alleged to be 17 years of age at the time of incident but she has already attained 18 years of age. Now, victim girl has performed the marriage with third person. Custodial interrogation of the present applicant is not required

and hence, the applicant be released on anticipatory bail in the event of his arrest.

5. The appeal is strongly opposed by the State as well as learned Counsel for the victim on the ground that victim was 17 years of age at the time of incident. Present applicant on the basis of false promise subjected her for sexual assault and committed the offence. Subsequently, present applicant denied to marry with her, and therefore, crime is registered against him. It is submitted by the learned Additional Public Prosecutor that in view of the bar provided under Section 18 and 18A of the Act of 1989, the application deserve to be rejected.

6. Learned Counsel for the victim endorsed the same contentions and prays for rejection of the application.

7. Heard learned Counsel for the applicant and learned Additional Public Prosecutor for the State and learned Counsel for the victim. Perused recitals of the FIR. From the recitals of the FIR, it reveals that the victim has lodged the FIR on an allegation that in the year 2021, she was working in Shraddha family shop where she got acquaintance with the present applicant. Present applicant promised her for marriage, thereafter he took her in one flat and demanded sexual favour from her. On her denial he shown his displeasure and assured her that he will perform the marriage with her and subjected her for sexual assault. Thereafter time to time, he promised her for marriage and subjected her

for sexual assault and subsequently, denied to marry with her. Therefore she approached to the police and lodged the FIR. During investigation, the Investigating Officer recorded her statement. She was referred for the medical examination. The medical certificate which is on record shows hymen is having old tear. The necessary samples have obtained and forwarded to chemical analyser. Chemical analyser report is yet to be received. It is submitted by the learned Counsel for the appellant that the victim girl was 18 years of age at the time of incident. During investigation, the Investigating Officer has collected her birth certificate. From the birth certificate, it reveals that at the time of first incident alleged by her, she was below 18 years of age. Thus, the *prima facie* material on record sufficiently shows the involvement of the present applicant in the alleged offence.

8. Learned Counsel Mr. Gandhe placed his reliance on the order passed by this Court on ***Criminal Application (ABA) No.168/2021***. After going through the facts of the case, it reveals that on the day of lodging of the FIR, the victim therein was 23 years old. The provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not attracted against the applicant therein. He further placed reliance on ***ABC Vs. State of Maharashtra 2021 ALL MR Cri.3664*** wherein also the application for pre-arrest bail was considered by the Court wherein para No.21 it is observed that in the complaint submitted

by her on the letter heads of Nationalised Youth Congress to the Assistant Commissioner of Police and the Home Minister, she did not refer to the incident of forcible physical relationship on 30/06/2020 and the alleged incident on 24/11/2020. The incident of 24/11/2020 was not mentioned in her complaint addressed to the Assistant Commissioner of Police dated 20/11/2020. These complaints to refer the alleged extent of Garland and marriage in temple and the allegation that the appellant and his family members were demanding Rs.50,00,000/-. By observing that the incidents which are narrated by her were not mentioned in her earlier complaints. The prayer for anticipatory bail was considered by the Court.

9. The nature of material presented on record in the instant case indicates that victim girl was 17 years of age at the time of initial incident. As far as the allegation regarding the forcible sexual intercourse is concerned, she specifically alleged that applicant took her in one flat at Kamal residency and demanded from her the sexual favours. On her denial he assured her that he will perform marriage with her and against her will subjected her for sexual intercourse. As regards the offence under the Atrocities Act, the provisions of Section 3(w)(i), 3(w)(ii), 3(2)(v), 3(2)(va) and 3(2)(vii) have been invoked. Section 3(w)(i) and 3(w)(ii) of the Atrocities Act pertains to the use of words, acts or gestures of a sexual nature and intentionally touching a woman

belonging to a Scheduled Caste or a Scheduled Tribe in a sexual manner without her consent. These ingredients are appearing to be present in the present case.

10. It is well settled that if a person is even alleged of accusation of committing an offence under the Act of 1989 the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why Section 3 has been applied to implicate a person for an offence under the Act of 1989, the courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability. What is intended to be emphasized is that while dealing with an application for anticipatory bail, the Courts would be justified in merely examining as to whether there is at all an accusation against a person for registering a case under Section 3 of the Act of 1989 and once the ingredients of the offence are available in the FIR or the complaint, the Courts would not be justified in entering into a further inquiry by summoning the case diary or any other material as to whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence. Such an exercise is intended to put to a complete bar against entertainment of application of anticipatory bail which is unambiguously laid down under Section 18 of the Act of 1989, which is apparent from the perusal of the

section itself and thus the court at the most would be required to evaluate the FIR itself with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of the ingredients constituting the alleged offence.

11. In the light of the well settled legal position if the facts of the present case are considered there is sufficient material to show that the allegations or the accusation of the present appellant is on the basis of the statement of the victim who stated that she was subjected for sexual assault by the appellant and she belongs to the Scheduled Caste. False promise was given to her and on the false assurance she was subjected for the sexual assault. Whether the allegations are true or false, is not necessary to go into. What is necessary to attract the Section 18 or 18A of the Act of 1989 is that whether there is a *prima facie* allegations against the present appellant reflects from the FIR or not. The *prima facie* allegations against the present appellant are present in the FIR, therefore, bar is attracted under Section 18 of the Act of 1989 and therefore, the application for anticipatory bail is not maintainable. In view of that appeal deserves to be dismissed.

12. Hence, the criminal appeal stands dismissed. No costs.

13. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)