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

CRIMINAL APPEAL NO.699 OF 2023

Ajay Shankar Malviya,
Aged 28 Years, Occu: Doctor,
R/o Kusumkot Bk.,
Tah. Dharni, District Amravati.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Dharni,
District Amravati.

2. Victim, Crime No.546/2023
Police Station Dharni,
District Amravati.

.... RESPONDENTS

Mr. Anil A. Dhawas, Advocate for appellant.
Mr. S. S. Hulke, APP for respondent No.1/State.
Ms. Archana P. Murrey, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19.12.2023

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. By preferring this appeal, the appellant has challenged the order passed by the Special Court, Achalpur in Criminal Bail Application No.481/2023, by which the anticipatory bail application of the present appellant is rejected.

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4. The prosecution of the present appellant on the basis of report lodged by the victim who is aged about 12 years and 10 months and residing at Ashram School at Dharni. As per her allegation she is studying and staying in Ashram School hostel, born on 11.11.2010. On 11.09.2023 she was having temperature and informed the Warden. Along with her other 10 to 12 girls were also not feeling well, they all are brought at Dharni by the teachers. As the physical health of the present victim was not good therefore, she was admitted in the hospital and present applicant was treating her. It is alleged that present applicant took her in a Lab room and contacted her from the back side. He also pressed her chest and placed his hands on her waists and asked her to remove the clothes. She thrown the hands of the present applicant and ran outside the room and disclosed the said facts to her teacher. On the basis of said report, police have registered the crime against the present applicant.

5. Present applicant is apprehending arrest at the hands of the police, as crime is registered against him on an allegation that he has outraged the modesty of the victim and also sexually assaulted her. It is contention of the learned Counsel for the appellant that the victim is a student of Std. VII in Ashram School and she claims to be member of Scheduled Tribe. There is no reason that appellant was having knowledge that she belongs to the Scheduled Caste.

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Therefore, contention that knowingly present applicant has outraged the modesty is not sustainable. He further submitted that being a Medical Officer he has examined the victim girl and out of misunderstanding the alleged crime is registered against the present appellant. His physical custody is not required as nothing is to be recovered from him. He be protected by granting anticipatory bail in the event of his arrest.

6. The said appeal is strongly opposed by the State on the ground that the allegation against the present appellant is of serious nature. The victim who is a small girl of 12 years was subjected for sexual assault by the present appellant. Considering the manner in which the alleged incident has taken place, the discretion cannot be used in favour of the present appellant. It is submitted that the anticipatory bail application itself is not maintainable and deserves to be dismissed.

7. Having heard learned Counsel for the appellant and learned APP for the State. Perused the recitals of the FIR as well as the investigation papers. The perusal of the FIR shows that alleged incident took place at 11.00 a.m. on 13.09.2023. There is no dispute as to the fact that as victim was suffering from fever. She was brought to the hospital and treated by the present applicant. As per her allegation the present applicant who is the Medical Officer has

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taken her in another room and contacted her from her back side and pressed her chest and also asked her to disrobed herself, but she thrown the hand of the present applicant and ran away out side the room and immediately disclosed the incident to her teacher. It was the teacher who has to take a call and report the incident to the police but she has not reported the incident therefore, she is also made an accused under Section 21 of the Protection of Children From Sexual Offences Act. Learned Counsel Mr. Dhawas vehemently submitted that while medically examining the victim she misunderstood the facts and lodged the false report. This submission doesn't appear to my mind as considering the allegation admittedly whatever act narrated by the victim is not while examining the victim. There is no reason for the victim to implicate the present appellant in the false case. Admittedly, there was no previous acquaintance between them and no reason forward before me to show the victim has reason to implicate the present appellant. During investigation, the statement of Santosh Sukhdev Metkar who is also the hospital staff has also stated that when he was present at that time victim came running from out side the cabin of the present applicant crying and disclosed the said incident. He immediately narrated the said incident to the another Medical Officer Yogita Kochalkar. Said Yogita Kochalkar also enquired with the victim and

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victim has narrated the incident to her. Thus there is immediate disclosure by the victim. The *prima facie* case is made out against the present appellant in the present case. Considering the nature and the circumstances in which the alleged incident has taken place, it is not a fit case wherein the discretion can be used in favour of the present appellant.

8. 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

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whether the allegations are true or false or whether there is any preponderance of probability of commission of such an offence.

9. In the light of the well settled principle the present appeal is not maintainable as *prima facie* case is made out from the recitals of the FIR. In view of that, the order passed by the learned trial Court calls no interference and the appeal has no merit and deserves to be dismissed. Accordingly, I proceed to pass following order.

ORDER

- (i) The appeal is hereby dismissed.
- (ii) The fees of the appointed Counsel be quantified as per rules.

(URMIL A JOSHI-PHALKE, J.)