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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.58 OF 2024

Gopinath Baban Kunjir

APPELLANT

VERSUS

The State of Maharashtra and Another

RESPONDENTS

.....
Mr. Rahul R. Karpe, Advocate for the appellant
Mr. B. M. Dhanure, APP for respondent - State
Ms. Namita Sirdeshpande, Advocate for respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st APRIL, 2024

ORDER :

1. By this appeal, filed under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, appellant challenges order passed by learned Additional Sessions Judge, Shrigonda in Criminal M. A. No., 837 of 2023 thereby rejecting anticipatory bail application filed by appellant.

2. Informant has lodged FIR stating that she is residing with her husband and children and is running a business of selling coal. Many businessmen and residents of Theur, Kunjirwadi, Pune, purchase coal from her. On 11th December, 2023, at about 8.30 p.m. informant, her daughter and labours Datta Waghmare and Balu Pawar were loading coal in a van at that time, appellant

came there in Mahindra Pickup vehicle and asked informant to load 74 bags of coal in the vehicle and assured her to make on line payment of earlier 8 vehicles and present vehicle within 2 to 4 days. When both the labours were loading coal bags in the vehicle, appellant asked for sexual favours from informant and told her that he will pay her extra money. Informant got enraged and refused for the same. Then appellant uttered name of her caste and said that, if money is paid, ladies from her community go with anybody.

3. On registration of FIR, appellant preferred Criminal M. A. No. 837 of 2023 for anticipatory bail, which is rejected by the learned Trial Court and hence the present appeal.

4. Heard learned advocate for appellant, learned APP for the State and learned advocate for respondent No.2. Perused the investigation papers.

5. Appellant claims to be innocent. His contention is that, due to business transactions he is falsely implicated in the crime. Appellant had apprehension that he would be falsely implicated in atrocity case and hence, prior to lodging of FIR, he had approached police authorities stating that informant and her husband had cheated him and they are threatening to implicate him in false case under the Atrocities Act. He had also lodged a

complaint under section 506 of the Indian Penal Code against informant. Informant was pressurizing him by forwarding messages to him on Whatsapp that he should marry her and give her right in his property, otherwise she will create a scene at his house.

6. Learned APP and learned advocate for informant vehemently opposed the appeal contending that offence under the Atrocities Act is clearly attracted in the facts of the present case. Allegations made in the FIR are supported by two eyewitnesses. Therefore, in view of bar under section 18 of the Atrocities Act, appellant is not entitled for anticipatory bail.

7. Record indicates that on 15th November, 2023, appellant complained to the police authorities that informant and her husband have cheated him for Rs.1,20,000/- and they are threatening to implicate him in false case under the Atrocities Act. On 17th December, 2023, at the instance of appellant, non cognizable case is registered at N.C. Registration No. 1355 of 2023 under section 506 of the Indian Penal Code, wherein it is alleged that informant had taken hand loan of Rs.1 lakh for construction of house and when appellant demanded back the said amount, informant forwarded message on Whatsapp that appellant should marry her and should give her right in his

property, otherwise she will create scene by coming to his house.

8. Admittedly, there are business transactions between appellant and informant. From the copies of Whatsapp messages exchanged between appellant and informant, placed on record, it *prima facie*, appears that, there are other relations between appellant and informant, other than business transactions. Complaint made by appellant on 15th November, 203 and the NC lodged by him are prior in point of time. Therefore, *prima facie*, there appears substance in the contention of appellant that as relations between appellant and informant went sour, he is falsely implicated in the present crime. There is delay in lodging the FIR, which is not explained by informant. In this factual background, *prima facie*, offences under the Atrocities Act are not attracted to the facts of the present case. Hence, bar under section 18 of the Atrocities Act, would not be applicable.

9. Appellant was granted interim protection and his cellphone so also the vehicle allegedly used in the crime, are seized. Though two eyewitnesses allegedly witnessed the incident, admittedly those are labours working with informant.

10. Investigation appears to be almost complete. Nothing is to be recovered from appellant. Hence, his pre-trial custodial detention is not necessary.

11. In the result, following order -

ORDER

- A. Appeal is allowed.
- B. Impugned order dated 4th January, 2024 passed by learned Additional Sessions Judge, Shrigonda in Criminal M. A. No., 837 of 2023 is quashed and set aside.
- C. In the event of arrest of appellant in connection with Crime No. 1015 of 2023 registered with Shrigonda Police Station, District - Ahmednagar, appellant -Gopinath Baban Kunjir be released on executing Personal Bond and Surety Bond of Rs.15,000/- with on surety in the like amount.
- D. Till filing of the charge sheet, appellant shall attend the concerned police station as and when called by the Investigating Officer.
- E. Appellant shall not, in any manner, try to contact and / or influence the informant. If appellant fails to follow these conditions, prosecution and informant are entitled to move for cancellation of anticipatory bail granted to appellant.
- F. Learned advocate appointed for informant be paid fees as per schedule within four weeks.

**[NITIN B. SURYAWANSHI]
JUDGE**