



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1187 OF 2023

Nazema Begam Musheer Khan Pathan ... Appellant

VERSUS

The State Of Maharashtra
And Another ... Respondent

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Mr. Rajendra N.Chavan, Advocate h/f Mr. Vishal A. Bagdiya,
Advocate for Appellant

Mr. A.R. Kale, APP for Respondent No.1 – State

Ms. Karishma Sarin, Advocate for Respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 01st MARCH, 2024

ORDER :

1. Leave to add prayer clause. Amendment to be carried out forthwith.

2. This appeal filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, takes exceptions to order passed by learned Additional Sessions Judge, Basmatnagar in Criminal Bail Application No.257 of 2023 thereby rejecting anticipatory bail to appellant in C.R. No.575 of 2023 registered with Basmat Town Police Station, District-Hingoli for the offence punishable under sections 376, 376(2)(n), 506 read with section 34 of the Indian Penal Code and under sections 3(1)(w), 3(2)(v) and 3(2)(va) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act.

3. Prosecutrix aged 35 years, belonging to Schedule Caste lodged FIR alleging that her marriage was performed with one Rajendra Gaikwad 12 years before. Two children were born out of the said wedlock. Elder son Baldip is studying in 7th standard and daughter Sapna is studying in 5th standard. As her husband was addicted to liquor, since last 10 years she is staying separately along with her children at Bauddhawada Basmat. Prior to six months, on 01.05.2023, Sajid Ismail Shaikh came in her contact. Intimacy between both of them developed. He promised to marry her and that he will make her journalist and against her wish, established physical contact with her. His sister (appellant) induced prosecutrix to keep physical relations with Sajid. Prosecutrix was not refusing for physical contact with a hope that Sajid will marry her. When she insisted for marriage he refused to marry her and threatened her that, if she discloses about their relations he will kill her. After registration of the crime, appellant filed Criminal bail application no. 257 of 2023 for anticipatory bail, which is rejected by the Sessions Court. Hence, the present appeal.

4. Heard learned advocate for appellant, learned APP for respondent No.1- State and learned advocate for respondent No.2 – informant.

5. Learned APP and learned advocate for respondent No.2 have opposed the application stating that accused Sajid has taken undue advantage of prosecutrix and present appellant has abated the crime. It is submitted that accused Sajid has threatened prosecutrix to withdraw crime registered against him, prosecutrix therefore has lodged four NCRs against him.

6. Except bare allegations made in the FIR that appellant induced prosecutrix to keep physical relations with accused Sajid, there is no material connecting appellant with the present crime. Main accused Sajid is yet to be arrested, but that cannot be a ground to deny pre-arrest bail to the appellant. Considering her gender and as nothing is to be recovered from her, pre-trial detention and/or interrogation of appellant is not necessary in the facts of the present case. Appeal therefore deserves to be allowed. Hence , the following order.

ORDER

- (i) Appeals is allowed.
- (ii) Impugned order dated 28.11.2023 passed by learned Additional Sessions Judge, Basmatnagar in Criminal Bail Application Nos.257 of 2023, is hereby quashed and set aside.
- (iii) Interim protection granted to appellant by order dated 21.12.2023 is hereby confirmed.
- (iv) Till filing of the charge sheet, the applicant shall attend the concerned police station as and when called by the Investigating Officer and shall co-operate in the investigation.
- (v) Appellant shall not, in any manner, influence the prosecution witnesses and/or tamper prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE