



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 328 OF 2024

DILIP BHAUSAHEB KALE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. V. D. Salunke, Advocate h/f Mr. Mayur V. Salunke, Advocate for Appellant

Mr. D. B. Bhange, APP for Respondent No.1/State

Ms. Pooja S. Ingle, Advocate for Respondent No.2 (Appointed)

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 22nd AUGUST, 2024

PER COURT :

1. This appeal filed under Section 18(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, challenges order dated 04/01/2024, passed by learned Special Judge, Osmanabad, below Exhibit-1 in Criminal Bail Application No.666/2023.

2. Prosecutrix, who belongs to Schedule Caste, lodged FIR on 03/11/2023, alleging that she stays along with her son Sumit aged 15 years and daughter Shruti aged 17 years. In March, 2016, she purchased motor for bore-well from Chaitanya Bore Wells and Material. After payment, appellant owner of the said shop obtained her cellphone number for mentioning it on bill. After few days, appellant contacted her on cellphone and told her that she is staying alone by leaving her husband and he feels sorry for her. Thereafter, one day when her children had gone to school, appellant

came to her house at SRT colony. Since prosecutrix was knowing him, she called her in house and went in the kitchen to bring water. Appellant followed her and embraced her from behind. When she tried to push him, he gagged her and threatened that if she raises hue and cry or opposes, she will be killed and if she shouts, she will be defamed. Then he forcibly established physical relations with her. Thereafter, from time to time, he used to come to her home and by taking name of her caste, used to threaten her that she will be killed and used to forcibly keep physical relations with her against her wish. Prosecutrix, being fed up with the atrocities committed by appellant, went and told her sufferings to brother of appellant, Shivaji Kale. Shivaji also abused her in the name of her caste and assaulted her with fists and kick blows. She, therefore, lodged complaint with Barshi Police Station against appellant. Prosecutrix also informed wife and son of appellant about the acts done by him. Thereafter, on 08/10/2023, family members of appellant called her at his cousin's house where, appellant, Shivaji Kale, Ketan Kale, Sharmila Kale and two others were present. When she went there, appellant and his relatives called name of her caste and threatened and assaulted her with fists and kick blows. On 12/10/2023, while prosecutrix was at her home, one unknown boy gave message to her that appellant and his relatives have called her in the Court to settle the matter. When she went at Osmanabad Court, Deepak Patil took her towards Panchayat Samiti Road and abused her by taking

name of her caste and assaulted her with fists and kick blows.

3. After registration of crime anticipatory bail application filed by appellant is rejected. Hence, the present appeal.

4. Heard learned advocate for appellant, learned AGP for respondent No.1-State and learned advocate appointed to represent respondent No.2. Perused the record.

5. In the FIR prosecutrix has alleged that in the year 2016 appellant committed rape on her. Thereafter, from time to time, their physical relations continued. This *prima facie* indicates consensual physical relations of prosecutrix and appellant. From the record it appears that when appellant's relatives tried to sever the relations between appellant and prosecutrix, present FIR is lodged.

6. From the FIR and investigation papers, no offences under Atrocity Act are made out. According to prosecutrix, appellant used to threaten her in the name of her caste and was forcibly establishing physical relations with her at her house. Another allegation is that appellant and co-accused abused and assaulted her in the name of caste in the house of Shivaji Kale, brother of appellant who is also co-accused. Since all these incidents have taken place inside the house, they are not within public view. Considering the delay in lodging FIR and as no dates are given of the alleged incidents, the allegations made in the FIR are vague. Therefore, *prima facie*, offences under Atrocity Act, are not attracted against appellant. Hence, bar under Section 18 of the said Act would

not be attracted in the present case.

7. Other co-accused in present crime are already granted anticipatory bail by this Court. Trial Court has failed to appreciate aforesaid aspects of the matter and has erred in rejecting anticipatory bail application of appellant. Custodial interrogation of appellant is not necessary for investigation in the facts of the present case. In the result, following order:-

ORDER

- (I) Appeal is allowed.
- (II) Impugned order dated 04/01/2024, passed by learned Special Judge, Osmanabad, below Exhibit-1 in Criminal Bail Application No.666/2023, is hereby quashed and set aside.
- (III) Interim protection granted to appellant vide order dated 04th April, 2024, is hereby confirmed.
- (IV) Till filing of charge-sheet, appellant shall attend concerned police station on every Sunday, between 10:00 a.m. to 02:00 p.m. and shall co-operate in the investigation. Appellant shall not tamper the prosecution evidence.
- (V) Fees of learned advocate appointed to represent respondent No.2 be paid by the High Court Legal Services, Sub-Committee, Aurangabad, as per the schedule, within a period of four weeks from today.

(NITIN B. SURYAWANSHI, J.)