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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.175 OF 2024

MALANG IMAM SHAIKH

..APPELLANT

VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. Tapan Thatte a/w Adv. Vivek N. Arote for the appellant.

Mr. B. B. Kulkarni, APP for the State.

Adv. Yugandhara Khanwilkar for respondent No.2.

ASI N. M. Thombare, Indapur Police Station.

CORAM : M. S. KARNIK, J.

DATE : APRIL 16, 2024.

JUDGMENT :

1. Heard learned counsel for the appellant, learned APP for the State and learned counsel for respondent No.2.

2. This is an appeal challenging an order dated 20.01.2024 passed by the trial Court rejecting the application made for pre-arrest bail. The appellant is seeking anticipatory bail in C.R. No.1227 of 2023 dated 20.11.2023 registered with Indapur Police Station, Pune for the offence punishable under Sections 376, 452, 506 of the Indian Penal Code, 1860, under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of Scheduled Caste and Scheduled Tribe

(Prevention of Atrocities) Act, 1989 (hereafter "Atrocities Act", for short) and under Section 7(1)(d) of the Protection of Civil Rights Act.

3. The date of the FIR is 20.11.2023. The date of the incident is 11.11.2023. As per the allegations in the FIR, the victim's son had taken a hand loan of Rs.5,000/- from the appellant for her medical treatment as she was not well. It is alleged that at around 8.30 p.m. on 11.11.2023, the appellant entered the house of the victim and asked for the mobile number of her son. The respondent No.2 gave the mobile number to the appellant. Thereafter, the appellant locked the door of the house from inside and committed the act with the respondent No.2 which is an offence under the aforesaid sections.

4. Learned APP and learned counsel appointed for the respondent No.2 opposed the appeal. Learned APP however submitted that the appellant has attended the Investigating Officer and co-operated. It is submitted that the bar under Section 18 of the Atrocities Act is clearly attracted in the present case. It is further submitted that the accusations

are serious in nature. Learned counsel for the respondent No.2 submitted that there is no reason to disbelieve the version of the prosecutrix and the consequence of delay in lodging the FIR is a matter which can be gone into at the time of trial.

5. Having heard learned counsel, I am of the opinion that the present appeal can be allowed. Prima facie there is a delay of nine days in lodging the FIR to which there is no satisfactory explanation. According to learned counsel for the appellant, this is a case of false implication. Furthermore, two days prior to the registration of the FIR, the appellant had on 18.11.2023 lodged a complaint with the Police Inspector, Indapur Police Station about the threat of extortion and implicating the appellant in a false case at the instance of the respondent No.2 if her demands are not met. The medical evidence is not supporting the prosecutrix. These are prima facie observations. In my opinion, in the facts and circumstances of the present case the bar under Section 18 of the Atrocities Act will not apply. The appellant can be granted the facility of pre-arrest bail.

The appellant has co-operated with the investigation. The interim protection already granted is therefore confirmed.

Hence, the following order :-

ORDER

- (a) The Criminal Appeal is allowed.
- (b) The impugned order dated 20.01.2024 passed by the trial Court is quashed and set aside.
- (c) In the event of arrest of the appellant-Malang Imam Shaikh in connection with C.R. No.1227 of 2023 registered with Indapur Police Station, Pune shall be released on bail on his furnishing P.R. bond of Rs.15,000/- with one or more sureties in the like amount.
- (d) The appellant shall attend the Investigating Officer of Indapur Police Station, Pune as and when called and co-operate with the investigation.
- (e) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The appellant shall not tamper with evidence.
- (f) On being released on bail, the appellant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) The appellant shall attend the trial regularly. The appellant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

6. The appeal is disposed of.

7. I appreciate the valuable assistance rendered by Advocate Yugandhara Khanwilkar, who appeared on behalf of respondent No.2 at my request. Her engagement may be regularized by the Maharashtra State Legal Services Authority.

(M. S. KARNIK, J.)