

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 564 OF 2023

Manisha Bhalchandra Kolekar @ Manisha Madke ... Appellant

Versus

State of Maharashtra and another ... Respondents

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Ms. Swapna Kode for the Appellant.

Mr. Vinod Chate, APP for the State-Respondent No.1.

Mr. Dushyant Pagare for Respondent No.2.

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CORAM : N.R. BORKAR, J.

DATED : 16 FEBRUARY 2024

P.C. :-

1. This Appeal takes exception to the order dated 21 January 2023 passed by the Additional Sessions Judge, Kalyan by which the Application filed by the appellant for anticipatory bail in Crime No.I-237/2021 registered at Kinhavali Police Station for the offences punishable under Sections 354, 354B, 452, 143, 147, 149, 323, 504, 506 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SCST Act') came to be rejected.

2. In earlier criminal appeal filed by the appellant being Criminal Appeal No.208 of 2022, this Court on 19 September 2022 had passed the following order :

. This Appeal is filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC/ST Act") against an order

passed by learned Additional Sessions Judge, Kalyan dated 16 February 2022 in Criminal Bail Application No.62 of 2022.

2. By the order impugned, the trial court rejected the anticipatory bail application filed by the present Appellant, who is accused in C.R. No.I-237 of 2021 registered at Kinhavali Police Station, for the offences punishable under Sections 354, 354-B, 452, 143, 147, 149, 323, 504 and 506 of the Indian Penal Code and under Sections 8, 12 of the Protection of Children from Sexual Offences Act and under Sections 3(1)(W)(i)(ii), 3(1)(R)(S) of the SC/ST Act.

3. On 3 March 2022, this Court passed the following order :

“1. Heard learned Counsel for the appellant.

2. By this appeal, the appellant seeks pre-arrest bail in connection with C.R. No.I-237 of 2021, registered with the Kinhavali Police Station, Thane Rural for the alleged offences punishable under Sections 354, 354B, 452, 143, 147, 149, 323, 504, 506 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SCST. Act') and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act.

3. Learned Counsel for the appellant submits that the appellant is a Police Constable attached to Shahapur Police Station and that her husband also an accused is a social worker helping the Adivasis. She submits that the allegations as against the appellant are false and baseless. According to the learned counsel for the appellant, the appellant had helped one lady viz. Baby Maruti Khandvi and others and hence the respondent No.2 had a grudge against her. According to the learned counsel for the appellant at the time of the alleged incident, the appellant was at her mother's place at Shirgaon for her brother's

marriage and as such she has been falsely implicated in the case only to pressurize her husband, who is also an accused. She submits that the appellant's husband was arrested during the course of investigation and has been subsequently released on bail. It is informed that there are several civil cases/disputes pending between the parties i.e. the appellant's husband and the respondent No.2's husband. She further submits that although the respondent No.2's husband is alleged to have been assaulted, no injuries have been sustained by him.

4. Issue notice to the respondents. Learned APP waives notice on behalf of the respondent No.1-State. Mr. Deshmukh, waives notice on behalf of the respondent No.2 and seeks time to file an affidavit-in-reply

5. Having heard the learned counsel for the appellant, the appellant has prima facie, made out a case for grant of interim protection. Accordingly, in the meantime, till the next date, the appellant is granted interim protection from arrest, on the following terms and conditions :-

ORDER

(i) In the event of the arrest, the appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/-, with one or two sureties in the like amount ;

(ii) The appellant shall report to the Investigating Officer of the concerned Police Station, from 8th to 10th March 2022, between 10.00 a.m. and 1:00 p.m, and thereafter as and when called;

(iii) The appellant shall not contact the complainant, witnesses or any person concerned with the case.

6. Stand over to 22nd March 2022.

7. All concerned to act on the authenticated copy of this order.”

4. The learned APP on instructions submits that during pendency of the present Appeal, the State has filed charge-sheet.

5. In view of the filing of the charge-sheet, instead of entertaining the present Appeal it would be appropriate to direct the Appellant to file regular bail application before the competent court and continue the order passed by this Court dated 3 March 2022 till the decision of the competent court in the application for regular bail.

6. The Appellant is directed to file application for regular bail within period of three weeks from today. If such bail application is filed, the concerned Court shall decide it on its own merits without being influenced by the order passed by this Court dated 3 March 2022.

7. The interim anticipatory bail granted to the Appellant by order dated 3 March 2022 shall continue to operate till the decision of the competent court in the application for regular bail.

8. The Criminal Appeal is disposed of in aforesaid terms. Needless to mention that the concerned court before passing an order on regular bail application of the Appellant, shall grant an opportunity of hearing to Respondent No.2.”

3. Learned Counsel for the appellant submits that the appellant was not properly advised and thus again an application for anticipatory bail was filed. It is submitted that the Appellant is willing to file regular bail application before the trial court/Sessions Court, and liberty be granted to that effect.

4. On the other hand, learned Counsel for Respondent No.2 and the Learned APP submit that by order dated 19 September 2022 the

appellant was permitted to file regular bail application, still she chose to file anticipatory bail application. It is submitted that no indulgence as sought by the appellant be shown to her.

5. In view of the submission of the learned Counsel for the appellant, I am inclined to grant liberty as sought by the appellant. Hence, the following order is passed :

(i) The appellant is permitted to file regular bail application before the trial court / Sessions Court within a period of two weeks from the date of uploading of this order.

(ii) If such application is filed, the trial Court/Sessions Court shall decide the same on its own merits.

(iii) Till the decision of the application, the appellant shall not be arrested, and for the purpose of application, she will be in symbolic judicial custody.

(iv) Criminal Appeal stands disposed of in above terms.

(N.R. BORKAR, J.)