



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

CRIMINAL APPEAL NO. 610 OF 2023

SANDEEP LAVKUSH JOSHI ..APPELLANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

**ALONG WITH
CRIMINAL APPEAL NO. 530 OF 2023**

JITENDRA BABAN KANTHE ..APPELLANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr. Sanjeev Kadam a/w Mr. Prashant Raul, Ms. Aditi Rajput
and Mr. Pratik Deshmukh, for Appellant in Appeal No. 610 of
2023.

Mr. Shivraj Kunchge, for Appellant in Appeal No. 530 of
2023.

Mr. Zakir Hussain, for Respondent No.2.

Ms. S. D.Shinde, APP for the State.

API- Sandeep Mhaske, Borivali police station is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 9, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the appellants, learned APP
and learned counsel appointed to represent the respondent
no.2.

2. By these appeals, preferred under section 14-A of
Scheduled Caste and Scheduled Tribes (Prevention of
Atrocities) Act, 1989, the appellants-accused seek pre-arrest

bail in connection with C.R. No.203/2023 registered with Borivali Police Station, Mumbai for the alleged offences punishable under sections 376(2)(f), 376(2)(j), 328, 346, 354, 386, 387, 506(2), 506, 323, 504, 34 of Indian Penal Code and under section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(2), 3(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Atrocities Act”) Caste and 1989 and under sections 3, 13 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013.

3. By order dated 03/05/2023, this Court had granted interim protection to the appellant-Jitendra Baban Kanthe, the relevant portion of which reads thus :

“3. Learned counsel for the appellant states that the appellant is the husband of respondent No.2, as such the provisions of SC/ST Act would not apply. He further submitted that the appellant and respondent No.2 got married on 28/11/2001 and the couple has a daughter aged 19 years. He further submits that the respondent No.2 till date has lodged 4 FIR's i.e. one against the advocate on 15/5/2022 alleging an offence punishable under section 376 of Indian Penal Code with the Virar Police Station; 2nd FIR as against the appellant and his family members on 24/3/2023 alleging offences punishable under section 376 (2)(f), 354-A, 498- A, 323, 504, 506 and 34 of Indian Penal Code with the Bhoiwada Police Station; the present FIR (3rd FIR) as against the appellant and one astrologer on 29/3/2023 with Borivali Police Station alleging

offences under section 376(2)(f), 376(2)(j), 328, 346, 354, 386, 387, 506(2), 506, 323, 504, 34 of IPC and under section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(2), 3(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under section 3, 13 of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013; and the 4th FIR with Arnala Sagari Police Station on 15/4/2023 against the appellant and his daughter. According to the learned counsel for the appellant, the allegations are false and baseless and that no offences as alleged under the SC/ST are disclosed as against the appellant.

4. Issue notice. Learned APP waives notice on behalf of respondents and seeks time to take instructions. Mr. Satpute waives notice on behalf of Respondent No.2 and he too seeks time.

5. Having heard learned counsel for the appellant we are prima facie of the opinion that the bar of section 18 of the SC/ST Act will not apply. Accordingly, in the meantime, till the next date, the appellant is granted interim protection from arrest on the following terms and conditions:”

4. So far as the appellant- Sandeep Lavkush Joshi is concerned, by an order dated 21/08/2023, this Court granted interim protection to the appellant-Sandeep Joshi, the relevant portion of which reads thus :

“3. Learned Counsel for the appellant states that the allegations as against the appellant, a certified astrologer, are false and baseless. He states that the present C.R pertains to an incident dated 11th May 2022 and the FIR has been lodged on 29th March 2023 with the Borivali Police Station, Mumbai. He submits that the respondent No.2 i.e. the prosecutrix has suppressed from the police of the Borivali Police Station of the lodging of an earlier FIR dated 24th March 2023 registered vide C.R. No.128 of 2023 with the Bhoiwada Police Station, as against Jitendra Baban Kanthe, also a co-accused in the present case alleging the same

offences i.e. the offences punishable under Sections 376(2)(n), 354A, 323, 504, 506 r/w 34 of the Indian Penal Code. He submits that there is not a whisper in the said C.R. i.e. C.R No.128 of 2023 lodged before the Bhoiwada Police Station with respect to the allegations made as against the appellant pertaining to an incident dated 11th May 2022. He submits that there are 4 CRs lodged by the respondent No.2 as against her husband, his family members including her own daughter and even an Advocate.

4. Issue notice to the respondents, returnable on 8th September 2023. Learned A.P.P waives notice on behalf of respondent No.1 - State and seeks time to take instructions.

7. Having heard the learned counsel for the appellant and having perused the papers, 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”

5. Learned APP as well as learned counsel for the respondent no. 2 appointed by this Court opposed the appeals for anticipatory bail. It is submitted that the allegations levelled against the appellants are serious in nature and therefore this is not a fit case where the appellants should be enlarged on anticipatory bail. It is submitted that the custodial interrogation is required having regard to the seriousness of the accusations.

6. So far as the present FIR i.e. CR. No. 203 of 2023 lodged with Borivali police station against the appellants on 29/03/2023 is concerned, the same pertains to the incident

dated 11/05/2022. The prosecutrix is the wife of the appellant - Jitendra. It is alleged that the marriage of the prosecutrix was solemnized with the appellant-Jitendra in 2001. The appellant- Jitendra also belongs to the Scheduled Caste community. The prosecutrix realised that the appellant - Jitendra is impotent. The prosecutrix felt cheated. The prosecutrix however continued to reside in the matrimonial home as the financial condition of her parents was very bad and therefore she had no choice. The prosecutrix alleged that she was treated like a maid servant. The prosecutrix alleged that though the appellant-Jitendra was residing at Oman, he never took her to Oman as his only intention was to make use of the prosecutrix as a household and domestic help. The prosecutrix was never treated by the appellant-Jitendra or her in-laws with respect.

7. It is then alleged that Jitendra asked her to visit a tantrik by name Sandeep Joshi- the appellant in Appeal No. 610 of 2023. Accordingly, the prosecutrix visited accused Sandeep on 11/05/2022. The accused Sandeep told the prosecutrix that she is possessed by some evil forces and therefore some rituals will have to be performed which will

help the prosecutrix to get rid of these evil forces. The prosecutrix was offered something to eat by the accused whereafter she felt giddy. Later, the prosecutrix realised that she was raped by the tantrik-accused Sandeep. In respect of this incident which is alleged to have taken place on 11/05/2022, the prosecutrix filed the present FIR only on 29/03/2023. There is delay in registering the FIR. The delay in registering FIR by itself may not be a factor to hold in favour of the accused considering the serious nature of the allegations. However, in the present case, prima facie, I am inclined to hold this aspect of delay in favour of the accused having regard to some attending circumstances which need to be noticed and cannot be ignored.

8. In another case, vide C.R. no. 490 of 2022 lodged with Virar police station, the prosecutrix lodged FIR dated 15/05/2022 against the accused, an advocate in whose office she was engaged as a junior, for allegedly having committed offence under section 376, 376(2)(n) of the Indian Penal Code ("IPC", for short) for the incident dated 16/11/2021. The accused therein, has been granted pre-arrest bail. Surprisingly, in this FIR lodged on 15/05/2022

there is no whisper of the incident dated 11/05/2022 which is the basis for registering the present FIR.

9. Thereafter on 24/03/2023, the prosecutrix lodged FIR No. 128 of 2023 with Bhoiwada police station for the offence punishable under sections 376(2)(n), 354-A, 323, 504, 506, 34 of IPC against the appellant i.e. her husband accused Jitendra as well as her in-laws including her mother-in-law and sister-in-law.

10. Then, on 29/03/2023, the prosecutrix lodged the present FIR. On 15/04/2023 vide C.R. No. 140 of 2023, the prosecutrix lodged a complaint with Arnala police station against her husband i.e. the appellant-Jitendra, her own daughter and her brother-in-law for the offences punishable under sections 354, 379, 323, 509, 504, 506, 406, 417, 418, 419 of IPC.

11. As indicated earlier, it is pertinent to note that just 4 days prior to the lodging of the FIR No. 490 of 2022, the incident in respect of the present offence alleged happened. There is no reference about this incident in the FIR No. 490 of 2022 which was lodged on 15/05/2022. The appellant-Jitendra belongs to the same caste as that of the

prosecutrix. Considering the nature of accusations, the delay in registering the FIR, in the facts and circumstances of the present case, prima facie, the possibility of the false implication cannot be ruled out. Though learned APP and learned counsel appointed by this Court to represent respondent no.2 made strenuous efforts to argue that the offence is serious and accusations do not entitle the appellant to be released on bail, in my opinion, in the facts and circumstances of the present case, the bar under section 18 of the Atrocities Act can be overcome and the appellants can be enlarged on pre-arrest bail. The appellants must co-operate with the investigation. Hence, the following order.

ORDER

- (i) In the event of the arrest, the appellants-Jitendra Baban Kanthe and Sandeep Lavkush Joshi be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- each with one or two sureties in the like amount;
- (ii) The appellants shall co-operate with the investigation and report to the Investigating Officer of the concerned Police Station, on 18th and 19th January 2024 between 11.00 a.m. and 01.00 p.m., and thereafter as and when called.

12. I appreciate the valuable assistance rendered by Advocate- Mr. Zakir Hussain, who appeared on behalf of respondent No.2 in this proceeding.

13. The appeals are allowed and disposed of.

(M. S. KARNIK, J.)