

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 135 OF 2024

Shivaji Rajaram Nikam

....*Appellant*

V/s.

The State of Maharashtra & Anr.

....*Respondents*

Ms. Priyanka Gupta *i/by. Mr. Rupesh Zade, for the Appellant.*

Ms. Shilpa Gajare-Dhumal, *APP for Respondent No.1-State.*

Ms. Manisha Devkar *a/w. Mr. Shankar Katkar and Ms. Siddhi Patil, for Respondent No.2.*

API, Mr. Gajanan R. Cheke from Baramati Police Station present.

CORAM : SANDEEP V. MARNE, J.

Dated : 29 July 2024.

P.C. :

1) This is an Appeal filed under the provisions of Section 14A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST Act**) challenging the order passed by the Additional Sessions Judge, Baramati rejecting Appellant's application for grant of pre-arrest bail under the provisions of Section 438 of the Code of Criminal Procedure, 1973 (**Code**).

2) I have heard Ms. Gupta, the learned counsel appearing for the Appellant, Ms. Devkar, the learned counsel appearing for Respondent No.2 and Ms. Gajare-Dhumal, learned APP appearing for State.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties and after going through the impugned FIR as well as the relevant records of the case, it is seen that the Appellant is working on the post of Assistant Sub-Inspector. The FIR alleges that the Appellant initially secured an amount of Rs.2,60,000/- from Complainant's mother for assisting her to secure bail. It is further alleged that Appellant demanded further amounts for deletion of Complainant's name from the chargesheet and obtained various amounts from the Complainant. That an amount of Rs.10,80,000/- is received by the Appellant from the Complainant in his bank account in addition to further amount of Rs.6,50,000/- in cash. The further allegation is that, the Appellant took the Complainant to a jeweller-Bharat Oswal for assisting her to redeem the gold pledged with another jeweller. The FIR further alleges that Appellant-Bharat Oswal gave Rs.10,00,000/- to the Complainant with instructions to redeem the pledged gold weighing 80 tolas. Further amount of Rs.10,00,000/- was given by Bharat Oswal to Complainant and this is how Appellant was supposed to get back her gold ornaments after payment of the said amount of Rs.20,00,000/- by Bharat Oswal. However, the said gold ornaments were kept by Bharat Oswal with himself. The FIR further alleges that another set of gold ornaments weighing 10 Tolas were also handed over by the Appellant to Bharat Oswal who kept the same in his possession. The Appellant threatened the Complainant with dire consequences if she demanded her gold ornaments. It is also alleged that the Appellant alongwith three others raped the Complainant.

4) The learned APP has taken me through the statement of Bank Account of the Complainant reflecting debit of various amounts and credit thereof in the Accounts of the Appellant. It therefore becomes difficult to believe that the story in the FIR could be entirely wrong. Appellant is a Police Officer and appears to have accepted various amounts from the Complainant in his Bank account. As a matter of fact on 2 July 2024,

Appellant had voluntarily showed willingness to refund amount of Rs.19,90,000/- received by him from the Complainant. However, Ms. Gupta the learned counsel appearing for the Appellant submits that the Appellant has shown inability to refund the said amount. Though the aspect of refund may not have direct bearing on entitlement of the Appellant for pre-arrest bail, the fact remains that the Appellant appears to have accepted various amounts from the Complainant in his own bank accounts. Being a Police Officer, the Appellant has *prima-facie* misused his position. He is also accused of serious offence of rape. Complainant is apparently forced to move out of the town out of fear.

5) Considering the above position, it would not be appropriate to grant pre-arrest bail to the Appellant. His custodial interrogation would enable the Police to collect the necessary evidence. No error therefore can be traced in the order passed by the Additional Sessions Judge. The Appeal, being devoid of merits, is accordingly **rejected**.

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[SANDEEP V. MARNE, J.]