

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

CRIMINAL APPEAL NO. 542 OF 2024

Shivraj Subhashrao Umbarkar

....Appellant

: Versus :

State of Maharashtra & Anr.

....Respondents

Mr. Nikhil Mengde *a/w. Mr. Siddhikesh Ghosalkar and Mr. Kunal Sawaskar, for the Appellant.*

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

Ms. Jai Kanade, *a/w. Mr. Rahul Shirgavkar, Advocate appointed for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

Dated : 4 September 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 dated 18 May 2024 passed by the learned Special Judge, Pune rejecting the application for pre-arrest bail filed by the Appellant in connection with C.R. No.115/2024 registered with Chandannagar Police Station, Pune for the offences punishable under Sections 376 and 376(2)(n) of the Indian Penal Code and Sections 3(1)(w)(r), 3(1)(v) and 3(1)(w)(ii) of the SCST Act.

2) I have heard Mr. Mengde, learned counsel appearing for the Appellant, Ms. Kanade, 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 findings recorded by the learned Judge denying pre-arrest bail, it is seen that the learned Judge has himself held that there is consensual sexual relationship between the Complainant and the Appellant. The relevant findings recorded by the learned Judge in para-10 of the order reads thus :

10. No doubt, there is consensual sexual relations with the informant and the applicant. The copy of first information report shows that the applicant used the insulting words against the informant on her caste. It appears that the informant has not denied the marriage as she is already married and she had consensual relation with him, but, he has denied her only on her caste. It appears that the applicant has insulted and humiliated the informant on her caste in public view i.e. when he was going to his village. Therefore, bar of Sections 18 and 18A of the Atrocities Act is attracted in this case. In these circumstances, the applicant is not entitled for pre-arrest bail. Hence, the order :-

ORDER

The application is rejected.

4) Thus, the learned Judge has rejected the prayer for pre-arrest bail, despite holding that there was consensual sexual relationship and that the complaint is filed only on account of insulting words used against the Complainant with reference to her caste.

5) Perusal of the FIR statement would indicate that the concerned utterances are apparently made in March 2024 when the Complainant enquired with the Accused about marriage. The FIR statement does not indicate that the said utterances are made at a place in public view, which is a necessary ingredient for attracting the

provisions under Section 3(1)(r) and 3(1)(s) of the SCST Act. So far as Section 3(1)(w)(ii) of the Act is concerned, the same applies to use of words, acts or gestures of a sexual nature towards a women belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to those community. However, the learned Judge himself has recorded that the relationship between the Complainant and the accused were of consensual in nature. So far as Section 3(2)(va) is concerned, *prima-facie* it appears that Section 376 is not an offence specified in the Schedule to the Act.

6) Ms. Kanade would vehemently submit that offence under Section 3(2)(v) is clearly attracted in the present case since the offence under Section 376 is punishable with imprisonment for a term of 10 years or more. However, the FIR does not allege commission of offence under Section 3(2)(v) against the Appellant.

7) Ms. Kanade would rely upon judgment of the Apex Court in the case of **Shajan Skaria V/s. The State of Kerala**¹ in which the Apex court has discussed the circumstances in which *prima-facie* case can be said to be made out in the FIR/complaint. The Apex Court has held in paras-47, 48 and 49 as under :

47. *Prima facie* is a Latin term that translates to “at first sight” or “based on first impression”. The expression “where no *prima facie* materials exist warranting arrest in a complaint or FIR” should be understood as “when based on first impression, no offence is made out as shown in the FIR or the complaint”. This means that when the necessary ingredients to constitute the

¹ Cri. Appeal No.2622/2024 decided on 23 August 2024

offence under the Act, 1989 are not made out upon the reading of the complaint, no case can be said to exist *prima facie*.

48. As a sequitur, if the necessary ingredients to constitute the offence under the Act, 1989 are not disclosed on the *prima facie* reading of the allegations levelled in the complaint or FIR, then in such circumstances, as per the consistent exposition by various decisions of this Court, the bar of Section 18 would not apply and the courts would not be absolutely precluded from granting pre-arrest bail to the accused persons.

49. In our opinion, the aforesaid is the only test that the court should apply, when an accused prays for anticipatory bail in connection with any offence alleged to have been committed under the provisions of the Act, 1989. In a given case, an accused may argue that although the allegations levelled in the FIR or the complaint do disclose the commission of an offence under the Act, 1989, yet the FIR or the complaint being palpably false on account of political or private vendetta, the court should consider the plea for grant of anticipatory bail despite the specific bar of Section 18 of the Act, 1989. However, if the accused puts forward the case of malicious prosecution on account of political or private vendetta then the same can be considered only by the High Court in exercise of its inherent powers under Section 482 of the Code or in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. However, powers under Section 438 of the CrPC cannot be exercised once the contents of the complaint/FIR disclose a *prima facie* case. In other words, if all the ingredients necessary for constituting the offence are borne out from the complaint, then the remedy of anticipatory bail becomes unavailable to the accused.

8) Following the dictum of the Apex Court in its judgment in ***Shajan Skaria*** (supra), I am of the view that ingredients necessary to constitute offences under the SCST Act are not made out and therefore

this Court is justified in holding that *prima-facie* case does not exist against the Appellant.

9) The Appellant is on interim protection granted by this Court by order dated 12 June 2024. In that view of the matter, interim protection granted in favour of the Appellant deserves to be made absolute.

10) I accordingly proceed to pass the following order :

(i) The order dated 18 May 2024 passed by the learned Special Judge is set aside.

(ii) In the event of arrest of the Appellant in connection with C.R. No.115/2024 registered with Chandannagar Police Station, Pune, he shall be released on bail on furnishing surety in the sum of Rs.25,000/- with one or two local sureties in the like amount.

(iii) The Appellant shall appear before the Investigating Officer, Chandannagar Police Station, Pune on 18th and 19 September, 2024 between 11 to 2 p.m. and co-operate with completion of investigation.

(iv) The Appellant shall furnish identity and address proof of himself and of his two blood relatives while furnishing sureties.

(v) The Appellant shall not pressurize the informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.

(vi) The Appellant shall attend every date before the Trial Court, unless exempted. Two consecutive defaults in

appearance, shall entitle the prosecution to apply for cancellation of bail.

11) Needless to observe that the findings recorded in the order are *prima-facie* and the investigations, as well as trial shall not be influenced by the said observations.

12) With the above directions, the Appeal is **allowed and disposed of.**

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[SANDEEP V. MARNE, J.]