



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.40 OF 2024

Marotrao Somala Rathod,
Age 53 years,
Occupation – Govt. Service,
R/o 199/1, Jamshetpur, Jam Bazar,
Tq. Pusad, District Yavatmal

...APPELLANT

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Gadge Nagar,
Amravati, Taluka and District Amravati
2. Chayya Himmatrao Lokhande,
Age 36 years,
R/o. Near House of Mr. Khodke,
Gadge Nagar, Amravati,
Taluka and District Amravati

...RESPONDENTS

Mr. R.M. Daga, Advocate for the appellant.
Ms R.V. Sharma, APP for the State.
Ms K. Deshpande, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 14, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short), the appellant has challenged the order dated 16/01/2024 whereby the Special Judge and Additional Sessions Judge-2, Amravati rejected the anticipatory bail application of the appellant bearing Criminal Bail Application No.1576/2023.

3. The appellant was preferred this application as victim has lodged report alleging that she is serving as an Inspector in the Sales Tax Department, Khamgaon and had a good reputation. On 06/06/2023, she was transferred from Amravati to Khamgaon and she was intending to cancel her transfer and requested the appellant and other senior officers. By taking advantage of her request for transfer the appellant allegedly sent her text messages which are obscene in nature on WhatsApp and also demanded sexual favours from her. On the basis of said report, police have registered the crime against the present appellant.

4. After registration of the crime, the appellant approached to the Special Court for grant of anticipatory bail by preferring the Criminal Bail Application No.1576/2023 which was rejected and hence this appeal is filed by the appellant.

5. It is submitted by the learned Counsel for the appellant that as far as the custodial interrogation is concerned which is not required as now incriminating article i.e. mobile phone is already seized. He further submitted that there is no averment in the FIR that though the appellant was knowing that she belongs to the Scheduled Caste she was sexually harassed by the appellant. The allegations which are false in nature levelled against the present appellant only because her request for transfer was not considered. He further submitted in view of the order passed by this Court the appellant has attended the proceedings before the Committee as well as before the police station which is constituted for the sexual harassment at the workplace i.e. Vishakha Committee. He submitted that considering all these subsequent events now custodial interrogation of the present appellant is not required. The bar under Section 18A of the Atrocities Act is also not attracted, and therefore, interim protection granted to the present applicant deserves to be confirmed.

6. Learned Additional Public Prosecutor strongly opposed the appeal on the ground that considering the recitals of the FIR wherein serious allegations are levelled against the present appellant. Present appellant is a superior officer of the informant, if he is released on anticipatory bail being he is an influential person will tamper the prosecution evidence and prays for rejection of the appeal.

7. Learned Counsel for the informant also endorsed the same contentions and submitted that considering the informant has already made a complaint before the Committee which is constituted for the purpose of dealing the complaint regarding the sexual harassment at a workplace. She submitted that though the mobile phone is seized however, custodial interrogation of the present appellant is required considering the nature of the allegations and prays for rejection of the appeal.

8. I have heard learned Counsel for the parties. Perused the statements and the investigation papers. The mobile phone of the present appellant is already seized as well as mobile phone of the victim is also seized. The investigating agency has collected the SIM card and memory card and forwarded it for the analysis to the Forensic lab. The said report is yet awaited. It further reveals that when the appellant was protected by granting ad-interim protection he has also attended the police station and cooperated with the investigating agency. The entire case revolves around the allegation that the present appellant has sent the text messages on the Cell phone number of the informant. Now the mobile phone of the victim is seized and no purpose will be served by sending him behind bar only for the interrogation purpose.

9. As far as the bar under Section 18A of the Atrocities Act is concerned now it is well settled that where *prima facie* case not made out, anticipatory bail can be granted in appropriate circumstances with a conscious exercise of powers. Section 18 and 18A of the Atrocities Act have no application where *prima facie* case is not made out. Considering the fact that the appellant was on interim bail before the trial Court and he has not misused his liberty. The *prima facie* case is to be ascertained on the basis of ascertaining the genuineness of the allegation and it can be substantiated on the basis of analysis report only. It would require the time to receive the said analysis report considering the custodial interrogation of the present appellant is not required and considering the fact that though the mobile phone of the victim is seized but it was locked and therefore, the investigating agency could not ascertain the nature of the messages victim has received. Now, the proceeding before the Vishakha Committee is also closed. In view of that the interim protection granted to the present appellant deserves to be confirmed. In view of that, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) The order passed by the Special Judge and Additional Sessions Judge-2, Amravati in Criminal Bail Application No.1576/2023 dated 16/01/2024 is hereby quashed and set aside.

(iii) In the event of arrest, the appellant - Marotrao Somala Rathod in connection with Crime No.1455 of 2023 registered at police station Gadge Nagar, Amravati, District Amravati for the offence punishable under Sections 354-A, 354-D and 509 of the Indian Penal Code and Section 3(1)(w)(ii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(v) The appellant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

10. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)