



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

CRIMINAL APPEAL NO. 205 OF 2024

APPELLANT :

(Original applicant)

Rekha S/o Madhukar Mankar
@ Rekha Wd/o Vilas Ghode,
Aged about 49 years, Occ. Teacher,
R/o. C/o. Vilas Ghode, Maa Randal
Residency, Flat no.C-2, Near Krushna
Dudh Dairy, Jawahar Nagar Chowk,
Akola, Tq. & Distt. Akola.

VERSUS

RESPONDENTS :

1. State of Maharashtra
Through its Police Station Officer,
Police Station, Shegaon Gramin,
Tq. Shegaon, District Buldhana.
2. Mahendra Baburao Savdekar,
Aged about 33 years, Occ. Labour,
R/o. Jawla (BK), Tq. Shegaon,
District Buldhana.

Shri Aniruddha C. Jaltare, Advocate for the appellant.
Shri M. J. Khan, Additional Public Prosecutor for respondent No.1.
Ms. Falguni Badani, Advocate (Appointed) for respondent No.2.

CORAM: URMILA JOSHI-PHALKE, J.
DATED : 08/05/2024.

ORAL JUDGMENT :

1. Apprehending the arrest at the hands of police in connection with Crime No.94/2024 registered under Sections 323, 506 of the Indian Penal Code, Sections 8 and 10 of the Protection of Children from Sexual offences Act, 2012 and Sections 3(1)(r), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (For short, "Atrocities Act"), the appellant approached to this Court for grant of anticipatory bail.

2. As per the contention of the appellant, he is prosecuted on the basis of report lodged by one Mahendra Baburao Saundekar, who alleged that he is residing along with his wife and children and doing the agricultural work. His son and daughter both are studying in Zilla Parishad Primary School at Jawala Budruk. His son is studying in 2nd Standard whereas his daughter is studying in 1st Standard. The present appellant is the Headmistress of the said school. On 15/03/2024, he approached to the school for obtaining bonafide certificate. From his son, he received the information that in the school, the appellant always distributing the sub-standard foods to the students. It is further revealed to him that the children are harassed by the present appellant at the school. On 21/03/2024, his son came home and disclosed that present appellant has assaulted him as the informant has made complaint about the sub-standard food distributed in the school. It is alleged that the present appellant has pulled the pant of the child and pulled the private part of the child. On the basis of said report, police have registered the crime against the present appellant. After registration of the crime, the

appellant approached to the Special Court for grant of pre-arrest bail. The Special Court by considering the bar under Section 18 of the Atrocities Act, rejected the application. Being aggrieved and dissatisfied with the order passed by the Special Court, present appeal is preferred by the appellant.

3. Shri Jaltare, learned counsel for the appellant submitted that there is rift between the management and the present appellant and therefore, she is being harassed by the management with the help of the parents of the students as well as by taking help of the students. He submitted that she was transferred from one school to another on that ground and now, only to remove her from service, the false report is filed against the present appellant. He further submitted that as far as allegations are concerned, it is completely baseless and false one. Her custodial interrogation is not required. He further submitted that as far as the allegations are concerned for which the punishment up to 5 years is provided. In view of that, custodial interrogation of the present appellant is not required and prays for releasing her on anticipatory bail.

4. Learned APP for respondent No.1 and learned appointed counsel for respondent No.2 have strongly opposed the

appeal on the ground that the statement of the children who are harassed by the present appellant sufficiently shows her involvement in the alleged offence. They further invited my attention towards the medical certificate which shows that the son of the informant has sustained injury on his right leg in the said incident. Considering the statement of not only the son of the informant, but other students also, the prima facie case is made out against the present appellant. They further submitted that the Special Enactment is to protect the children from sexual harassment. Considering the gravity of the offence, the bail application of the present appellant deserves to be rejected. It is further submitted that there is bar under Sections 18 and 18-A of the Atrocities Act. In view of that bar also, the appeal deserves to be dismissed.

5. Having heard learned counsel for the appellant and the learned APP for respondent No.1 and learned appointed counsel for the respondent No.2, perused the investigation papers. As far as the allegations are concerned, it is alleged that present appellant who is a Headmistress physically touched the private part of the children who are the students studying in the said school and caused them harassment. To substantiate the said contention, the prosecution placed reliance on the statement of

son of the informant who is aged about 8 years then another witnesses namely; two other students aged about 6 years, aged about 8 years. All the students have narrated the incident that it is the habit of the present appellant to pull the private part of the children. It is stated by one of the victim that prior to some days, present appellant has pulled his urinal place and therefore, he was having the pains. The statement of another victim is also of the similar nature. The appellant is serving in the capacity of the guardian of the students and she is under obligation to protect the rights of the students. The statements of various students show that she has harassed the small children, who are studying in the school. The object of the Special Enactment is to protect the children from offence of sexual offence, sexual harassment and pornography and provide for other benefits i.e. establishing the Special Courts for trial of such offences. As far as the offence under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act") is concerned, the definition of sexual harassment is given under Section 7 of the POCSO Act. In view of said definition, whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves

physical contact without penetration is said to commit sexual assault. This clause defines sexual assault. It provides that if a person commits sexual assault with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration. The statement of the son of the informant and the statements of other two students clearly show that the appellant has not only touched to their penis, but pulled the penis also. Whether, there was sexual intent or not is a matter of evidence and at this stage, the prima facie case is made out against the present appellant. It is further submitted by the learned counsel for the appellant that the provisions of the Atrocities Act are not applicable against the present appellant as she belongs to “Mahadev Koli” which is also scheduled caste.

6. Learned APP submitted that the production of said certificate before the Court cannot be considered in view of the Judgment of the Hon'ble Apex Court. The learned APP placed reliance in the case of **State of Orissa Vrs. Debendra Nath Padhi**, reported in **AIR 2005 SC 359** wherein while considering the discharge application of the accused, it is held by the Hon'ble Apex Court that no provision in the Code grants to the accused any right

to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial. The material as produced by the prosecution alone is to be considered and not the one produced by the accused. Considering the said observation, at the most, the appellant can bring this fact to the notice of the Investigating Officer that she also belongs to the scheduled caste community. At this stage, even it is considered that provisions of Atrocities Act are not applicable in the present case, but considering allegations against sexual assault on the victim children who are aged about 6 and 8 years and prima facie case is made out showing the involvement of the present appellant in the sexual assault, the application for grant of anticipatory bail deserves to be rejected. Moreover, there is specific bar under Sections 18 and 18-A of the Atrocities Act. Regarding the same, when prima facie case is made out attracting the provisions of the Atrocities Act, Section 18 clearly debars him or her from seeking remedy for anticipatory bail. It is only in the circumstances where there is absolutely no material to infer as to why Section 3 has been applied for an offence under the Act of 1989, the Courts would be justified to examine whether the application can be rejected on the ground of its maintainability. In the case of **Prathvi Raj Chauhan Vrs. Union of India and others**, reported in (2020) 4

SCC 727 wherein also, it is held that grant of anticipatory bail under Section 438 of Code of Criminal Procedure bars in respect of offence under the 1989 Act. However, where prima facie case is made out, the anticipatory bail can be granted in appropriate circumstances with cautious exercise of powers. Sections 18 and 18-A of the Atrocities Act have no application where prima facie case is made out, however, for evaluating the prima facie case, re-appreciation of the evidence is not required. Thus, where prima facie case is made out, bar under Section 18 of the Atrocities Act is attracted. In view of the same also, application for grant of anticipatory bail is not maintainable.

7. Learned APP placed reliance on **Sumitha Pradeep Vrs. Arun Kumar C. K. and others**, reported in **AIR 2022 SC 5705** wherein while considering the application for cancellation of bail, the Hon'ble Apex Court considered the gravity of the offence which are punishable under the Special Enactment Protection of Children from Sexual offences Act, 2012 and in Para No.12, it is observed that in a case containing the serious allegations, the High Court ought not to have exercised its jurisdiction in granting protection against arrest, as the Investigating Officer deserves free-hand to take the investigation to its logical conclusion. It goes without saying that appearance before the Investigating Officer,

who has been prevented from subjecting the respondent No.1 to custodial interrogation, can hardly be fruitful to find out the prima facie substance in the allegations, which are of extreme serious in nature. In Para No.16, it is further held that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. It is further observed that in many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and therefore, anticipatory bail may be granted. There appears to be serious misconception of law that if no case for custodial interrogation is made by the prosecution, then that alone would be a good ground to grant anticipatory bail. The custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the Court hearing an anticipatory bail application should consider if the prima facie case put up

against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated by itself, cannot be a ground to grant anticipatory bail.

8. In the light of the above observations and considering facts and circumstances of the present case, there is prima facie material against the present appellant to show that she has sexually assaulted the small boys within the age group of 6 to 8 years. Thus, the serious allegations are levelled against the present appellant. In view of that, the application for grant of anticipatory bail deserves to be rejected. Accordingly, I proceed to pass following order :-

ORDER

The appeal is devoid of merit and liable to be dismissed.
Accordingly, the appeal is dismissed.

9. The fees of the appointed counsel for respondent No.2 be quantified as per the Rules.

[URMILA JOSHI-PHALKE, J.]