



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

CRIMINAL APPEAL NO. 395 OF 2023

APPELLANT: Rushikesh s/o Vasantrao Deshmukh,
Aged about 38 years, Gram Panchyat
Member, R/o Wadner Bholji,
Tah. Nandura, District Buldhana.

...V E R S U S...

RESPONDENTS 1] State of Maharashtra,
through Police Station Officer,
Police Station Nandura, Tah. Nandura,
District Buldhana.

2] Seema w/o Shivaji Chandanshiv,
Aged about 25 years,
Occupation : Household work,
R/o Krushna Nagar, Wadner Bholji,
Tah. Nandura, District Buldhana.

Mr. A.M. Tirukh, counsel for appellant.
Mrs. Sneha Dhote, APP for the respondent No.1.
Ms. C.S. Bhute, counsel (appointed) for the respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **08/02/2024**

ORAL JUDGMENT :

1. Heard. **Admit.**
2. Heard finally with the consent of the learned counsel
appearing for the parties.

3. By preferring this appeal, the appellant has challenged the order passed by the Special Judge, Malkapur, under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act dated 29/05/2023, by which the application for grant of anticipatory bail is rejected.

4. The appellant is apprehending arrest at the hands of Police as crime is registered against him vide Crime No.304/2023 registered at Police Station Nandura, District Buldhana for the offences punishable under Sections 452, 354, 354(B), 323, 504 and 506 of the Indian Penal Code, 1860 along with Sections 3(1)(r), 3(1)(s), 3(1)(w)(i)(ii) and Sections 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').

5. The accusation against the present appellant is that on 17/05/2023 at about 5.15 p.m. when she was alone in the house, the appellant entered into her house and abused her in a filthy language as well as abused her on her caste and outraged her modesty by holding her hand and assaulting her by fist and kick blows. On the basis of said report, the Police have registered the crime and therefore, the appellant approached to the Special Court for grant of bail. The Special Court rejected the bail

application by observing that as the offence alleged is under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i)(ii) and Sections 3(2)(va) of the Act, 1989, the bar is attracted under Section 18 and rejected the application.

6. Learned counsel for the appellant submitted that no prima-facie case is made out from the recitals of the FIR, as there is no whisper regarding the abuses on the caste, and therefore, no offence is made out under the provisions of the Act of 1989 and therefore, the bar under Section 18 or 18A is not attracted. He submitted that the observation of the learned trial Court regarding the bar is attracted is erroneous and liable to be quashed and set aside.

7. He submitted that even accepting the recitals of the FIR as it is, no offence is made out against the present appellant under the Act of 1989, and the other offences which are alleged are not punishable with more than seven years. Moreover, after the interim protection is granted to the present appellant, he has cooperated with the investigating agency and his custodial interrogation is not required,

8. Per contra, learned Additional Public Prosecutor strongly opposed the application on the ground that there is a

specific bar under Section 18A of the Act of 1989, and therefore, the appeal is devoid of merits and liable to be dismissed.

9. Learned counsel for the respondent No.2 has also endorsed the same contention and prays for dismissal of the appeal.

10. On perusal of the recitals of the FIR and investigation papers, it reveals that present appellant is elected as a Ward Member of the Gram Panchayat on 20/01/2021. Thereafter, he made a complaint against the informant as she has encroached upon the public road. He had also produced on record some photographs to show that the informant has encroached upon the public road, and gram panchayat has issued the notice to informant and her family members. Thereafter, this complaint came to be filed against the present appellant.

11. It is further submitted by learned counsel for the appellant that initially on 17/05/2023, she has lodged the report alleging that there was a dispute between Durga and Poonam, and there was no allegation regarding outraging of the modesty against the present appellant. In the initial complaint, only allegation was made that he had threatened her. Thus, on the basis of the initial complaint, the NC report was lodged. Subsequently, the only

intention to involve the present appellant in a serious offence, this report is lodged.

12. Considering the submissions made by the learned counsel and on perusal of the entire investigation papers, it appears that informant admittedly filed the two FIR. Initially in the first FIR, there was no allegation regarding the abuses by the present appellant on her caste. In the subsequent FIR, the allegation is made but there is no specific recitals that, what abuses are uttered by the present appellant. Even as per the allegation in subsequent FIR, there is no reference regarding the caste of the informant. Thus, prima-facie case is not made out from the recitals of the FIR. Now, it is well settled that when there is no prima-facie case made out, the anticipatory bail can be granted in appropriate circumstances..

13. The Hon'ble Apex Court in the case of ***Prathvi Raj Chauhan V/s Union of India and others [(2020) 4 SCC 727]***, wherein it is held where prima-facie case is not made out the anticipatory bail can be granted in appropriate circumstances with cautious exercise of the power. It further reveals from the record that after the interim protection is granted to the present appellant and he has cooperated with the investigation agency.

14. Considering no prima-facie case is made out, even there is no reference of the caste and the appellant has not misused the liberty granted to him, the appeal deserves to be allowed by imposing certain conditions. In view of that, the interim protection granted to the present appellant deserves to be confirmed and appeal deserves to be allowed. Accordingly, I proceed to pass the following order:

- a) The criminal appeal is **allowed**.
- b) The order passed by the learned the Special Judge, Malkapur, District Buldhana under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in Anticipatory Bail Application No. 123/2023 dated 29/05/2023 is quashed and set aside.
- c) In the event of his arrest, the appellant – **Rushikesh s/o Vasantrao Deshmukh** is released on anticipatory bail, in connection with crime No.304/2023 registered at Nandura Police Station, district Buldhana for the offences punishable under Sections 452, 354, 354(B), 323, 504 and 506 of the Indian Penal Code, 1860 read with Section 3(1)(r), 3(1)(s), 3(1)(w)(i)(ii) and Sections 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

- d) The appellant shall attend the concerned Police Station as and when required for the investigation purpose.
- e) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case and shall not tamper with the prosecution evidence.

The Criminal Appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]