



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

CRIMINAL APPEAL NO. 549 OF 2023

APPELLANT:

Ravi s/o Ashok Kumar Aswani,
Aged about 36 years,
Occupation – Business, R/o In the Line
of Jhulelal Oil Mill, Rajendra Ward,
Gondia, Tah. and District Gondia.

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

RESPONDENTS

- 1] State of Maharashtra,
through its Police Station Officer,
Police Station Tirora, Tah. Tirora,
District - Gondia.
- 2] Shridevi Premlal Ukey,
Aged about 39 years, Occupation -
R/o Lakhegaon, Tah. Tirora,
District Gondia.

Mr. N.R. Tekade, counsel for appellant.

Mrs. M.A.Barbde, APP for respondent/State.

Ms. Falguni Badani, counsel (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 29/01/2024

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 District Judge-1 and Additional Sessions Judge, Gondia in Misc. Criminal Bail Application No. 258/2023, by which the application of the appellant was rejected.

4. The appellant is apprehending arrest at the hands of the Police, as the crime is registered on the basis of report lodged by the victim, on an allegation that she is serving as a Health Worker in Primary Health Center, Sub-Center, Lakhegaon, Tah. Tirora, District Gondia. On 29th May, 2023, one lady by name - Ritu Chaudhari, came to the hospital for delivery. At the relevant time, the co-accused was also along with her, and there was hot exchange of words between them. In the said dispute, she was abused in filthy language on her caste and assaulted the victim. On the basis of the said report, police have registered the crime against the co-accused as well as the present appellant.

5. Mr. N.R. Tekade, learned counsel for the appellant submitted that as far as the present appellant is concerned, his name is not mentioned in the First Information Report. There is neither allegation that he has abused on her caste nor there is an allegation that he has assaulted her. However, the Investigating Officer is attempting to arrest him and therefore, he approached the

learned trial Court, but the learned trial Court has not considered that no specific role is attributed to the present appellant and no prima-facie case is made out against him. The learned trial Court has also ignored the well settled legal position that if the prima facie is not made out from the recitals of the FIR, the anticipatory bail application can be granted in appropriate circumstances. Thus, the order passed by the learned Trial Court is erroneous and liable to be set aside.

6. Learned APP has raised a strong objection to the application and contended that during the investigation, the video recording was seized by the Investigating Officer which disclosed the involvement of the present appellant. She further submitted that there is a bar under Sections 18 and 18-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989') hence, anticipatory bail application is not maintainable. Therefore, the order passed by the learned trial Court is a legal and correct one and liable to be confirmed.

7. Learned counsel for the informant endorsed the same contention and submitted that the act executed by the co-accused is in furtherance of common intention, and therefore, the application for anticipatory bail is not maintainable. The bar under Section 18 or 18A of the Act of 1989 is attracted and the appeal filed by the appellant

deserves to be dismissed.

8. Heard learned counsel for the appellant, learned appointed counsel as well as learned APP for the State. Perused the recitals of the FIR. As far as the allegation against the present appellant is concerned, neither his name is mentioned in the First Information Report nor any role attributed to him in the said First Information Report.

9. It is well settled that while considering anticipatory bail application in respect of the offence punishable under the Act of 1989 and from the recitals of the First Information Report, prima-facie case is to be made out. To attract the bar under Section 18 or 18A of the Act 1989, there should be some material to connect the present appellant. In the present First Information Report, there is no allegation against the present appellant even though his name is not mentioned. Learned trial Court has stated that on the basis of video recording the involvement of the present appellant is revealed. The appellant is unknown to the informant, however, the recitals of the First Information Report nowhere show that one unknown person was present at the time of occurrence and committed the crime.

10. Considering that there is no prima-facie case against the present appellant, the bar under Section 18 or 18A of the Act of 1989 is not attracted and hence, he can be protected by granting anticipatory bail.

11. On perusal of the recitals of the First Information Report and the role attributed to the present appellant, the appellant has made out a case for grant of anticipatory bail. The learned trial Court has ignored this fact and rejected the bail application erroneously as no prima-facie case is made out against the present appellant, the anticipatory bail granted to him, deserves to be confirmed. Accordingly, I pass the following order:

- a) The Criminal Appeal No. 549/2023 is **allowed**.
- b) The order passed by the learned District Judge-1 and Additional Sessions Judge, Gondia, rejecting the Criminal Bail Application No. 258/2023 is quashed and set aside.
- c) The appellant is released on bail, in the event of his arrest in Crime No. 373/2023 registered with Police Station Tirora, District Gondia for the offences punishable Sections 353, 354, 354-B, 323, 294, 506, 509 read with Section 34 of the Indian Penal Code, 1860 and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s) and 3(2)(v-a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, on executing P.R. Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

- d) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case.
- e) The fees of the appointed counsel be quantified as per the Rules.

The criminal appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]