



IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.690 OF 2025

Nitin s/o Ramesh Sapkal

... APPELLANT

VERSUS

The State of Maharashtra & anr.

... RESPONDENTS

.....

Mr. Suraj R. Mantri, Advocate for appellant

Mr. R.D. Raut, A.P.P. for respondent No.1 – State

Mr. A.G. Jadhav, Advocate for respondent No.2

.....

CORAM : Y.G. KHOBRAGADE, J.

Date of reserving order : 8th APRIL, 2026

Date of pronouncing order : 20th APRIL, 2026

ORDER :

1. By the present appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant takes exception to the order dated 3/9/2025, passed in Criminal Appeal No.672/2025, whereby the learned Additional Sessions Judge-1/ Special Judge under the Atrocities Act declined to enlarge the appellant/ accused on

anticipatory bail in connection with Crime No. 0428/2025, registered with Ardhapur Police Station, District Nanded on 22/7/2025 for the offences punishable under Sections 64(1), 351(2), 351(3) of the Bhartiya Nyaya Sanhita, 2023 (for short BNS, 2023) and Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act').

2. It is the case of prosecution that, the respondent No.2/ informant lodged a report with Ardhapur Police Station alleging that, on 21/7/2025 at about 11.00 a.m., after the college was over, she and her friends were proceeding on foot by road. At that time, the accused (1) Sattaji Sanjay Bharkad, (2) Nitin Sapkal (present appellant/ accused) and (3) Shekhar Pawade visited them. Thereafter the accused No.1 Sattaji Bharkad insisted her to accompany him, failing which he would kill her brother. Similarly, the present appellant/ accused Nitin Sapkal insisted her another friend, and the accused No.3 Shekhar Pawade insisted her another friend to accompany with them on their motorcycles, failing which they would kill their parents by abusing in castiest language and they were brought at Garwa Lodge and taken them in the lodge and obtained their Aadhar cards forcibly. Thereafter, the accused

Nos. 1 to 3 took the victim and her friends in separate rooms of the Lodge/Hotel and forcibly committed rape on them. However, the brother of one of the victim visited at Lodge and relieved the victim and her friends from the clutches of the accused persons.

3. According to the informant/respondent No.2, all the accused persons including the present appellant/accused were having knowledge that, all victims- girls are members of Scheduled Caste but all the accused persons forcibly taken them at the Lodge/Hotel and committed forcible sexual intercourse with them. According to the respondent No.2 informant, the present appellant/accused forcibly committed sexual intercourse with her by issuance of life threat and made castiest slur.

4. The learned counsel for the appellant/accused canvassed in vehemence that, prior to lodging of the F.I.R. No.428/2025 by the respondent No.2, the appellant had lodged the F.I.R. against the brother of the present respondent No.2. So also, one Amol Sanjay Bharkad, the brother of Sattaji Bharkad lodged F.I.R. against the brother and relatives of the respondent No.2 informant for the offences punishable under Sections 109(1), 115(2), 3(5) of the BNS, 2023 bearing Crime No.427/2025 on 22/7/2025 at about 6.19 p.m. with Ardhapur Police Station.

5. It is further contended that, since past two years the informant Amol Bharkad is working with Reliance General Showroom, Nanded as labour whereas his brother Sattaji Bharkad is doing labour work at Reliance Jio Petrol Pump at Ardhapur Road. On 21/07/2025 at about 3.05 p.m., Mr. Nitin Bharkad gave call to Amol Bharkad, informed that his brother Sattaji Bharkad is lying in injured condition due to assault by one Dipak behind Betel Kiosk of one Abhijeet Tekale. Thereafter the injured was shifted at Government Hospital. The informant Amol Bharkad visited the Government Hospital and met the injured Sattaji Bharkad. According to the informant in F.I.R. No. 427/2025, the injured Sattaji Bharkad had sustained injuries on his chest, back head and left shoulder. On enquiry, his brother injured Sattaji Bharkad disclosed him about the assault at the hands of Akash Sontakke, Mangesh Sontakke and Dipak Sontakke with sharp edged weapon. Therefore, in order to counter the said F.I.R., the respondent No.2 informant lodged the F.I.R. No.428/2025, falsely implicating the present appellant and other accused.

6. The learned counsel appearing for the appellant further canvassed that, there were love affairs between the appellant/ accused and the respondent No.2/ informant and out of love affair,

the appellant/ accused and the respondent No.2 informant were having chats on each other's mobile. So also, they were exchanging messages through Whatsapp. However, on the day of incident, the respondent No.2 victim had called the appellant for sexual favour. The appellant/ accused has not committed forcible sexual intercourse with the victim. Further the appellant/ accused has not abused the victim respondent No.2 in her caste. Therefore, the essential ingredients to constitute an offence punishable under Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Atrocities Act are not attracted. Therefore, there is no bar under Section 18 of the Atrocities act to enlarge the appellant/ accused on anticipatory bail.

7. It is further canvassed that, on 7/10/2025, this Court passed an ad-interim order and enlarged the appellant/ accused on ad-interim anticipatory bail on certain terms and conditions. Therefore, in pursuance of the said order, the appellant/ accused visited the Ardhapur Police Station for furnishing bail. However, at the relevant time, the investigating officer- Dy. Superintendent of Police Mr. Danial Ben not accepted the surety on count that the order is in respect of "in the event of arrest". Therefore, the appellant is not required to furnish the surety and P.R. bond.

8. The learned counsel appearing for the appellant/accused canvassed that, after the ad-interim order dated 7/10/2025, the appellant/accused approached the concerned investigating officer, but no surety and P.R. bond was accepted and no acknowledgement was given by the investigating officer. Therefore, the appellant/accused has not breached any condition of the ad-interim order dated 7/10/2025 passed by this Court.

9. It is further canvassed that, in another crime No.427/2025, the appellant is a witness and the investigating officer has recorded statement of the appellant in said crime. However, the appellant was never called upon to furnish the bail bonds. Further, on 21/2/2026, the appellant had received a phone call, therefore, he visited the concerned Ardhapur Police Station in compliance of the order dated 10/2/2026 passed by this Court. However, on that day also the concerned officer has not given acknowledgement. The appellant has produced some Geotag photographs to substantiate about his visit at the office of the Sub-Divisional Police Officer, Nanded for compliance of terms and conditions of order dated 7/10/2025.

10. Per contra, the prosecution has filed reply affidavit and strongly opposed the appeal. The learned A.P.P. canvassed that,

the respondent No.2 lodged the F.I.R. No.428/2025 alleging that though the appellant/ accused having knowledge that the respondent No.2 victim belongs to a member of Scheduled Caste and committed forcible sexual intercourse with her under the threat of life to her brother. The Sub-Divisional Police Officer (Rural Division), Nanded carried investigation. During the course of investigation, the investigating officer collected school extract and caste certificate of the informant as well as other victims. On 23/7/2023, the investigating officer visited at the spot of incident and drawn spot panchanama. During the course of investigation, the investigating officer seized the clothes of the informant and other victims under the seizure panchanama. The victims were referred for medical examination. The Medical Officer medically examined the victims and issued medical certificates, which corroborates about forcible intercourse with the victims as well as the respondent No.2 informant. Thereafter, the statements of victims are recorded under Section 183 of the Code of Criminal Procedure by the learned Judicial Magistrate, First Class, which corroborates the F.I.R.

11. The learned A.P.P. further canvassed that, though the appellant/ accused and his associates were knowing that the

victims belong to Scheduled Caste and the present appellant/ accused and other accused forcibly taken the victims- girls who belong to Scheduled Caste, in the lodge and committed forcible sexual intercourse. So also, the victims are castiest slurred at the hands of the appellant/ accused in the public view. Therefore, the bar is created under Section 18 of the Atrocities Act to enlarge the appellant/ accused on anticipatory bail under Section 482 of the BNSS, 2023.

12. Having regard to the submissions canvassed on behalf of both the parties, I have gone through the record. It is not in dispute that, on 22/7/2025 at about 20.20 Hrs., F.I.R. No.428/2025 came to be registered against the present appellant/ accused for the offences punishable under Sections 64(1), 351(2), 351(3) of the BNS, 2023 and Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(w)(i), 3(1)(w) and (ii), 3(2)(va) of the Atrocities Act on the basis of the report lodged by the present respondent No.2. As per the contents of the F.I.R., the respondent No.2 victim and her friends belong to Scheduled Caste and said fact is known to the present appellant/ accused and his two friends namely Sattaji Bharkad and Shekhar Pawade. On the day of the incident, the present appellant and his friends visited the victims on motorcycle and they have taken the

victims on their motorcycles under the compulsion of life threat to her brother. The accused persons taken the victims in separate rooms of the lodge and obtained their Aadhar Cards by giving threats. Thereafter, the appellant/ accused snapped photographs of the respondent No.2 with him and given the threats to forward the said photographs to her father and also given threats to kill her brother if she discloses the said fact to anyone. Subsequently, after getting knowledge, brother of one of the victim visited there and released the victims from the clutches of the accused persons.

13. On perusal of statements of the victim it appears that, the present appellant/ accused committed forcible sexual intercourse with her under the threat and by putting her under fear. According to the investigating officer, the necessary clothes of the victims are seized and sent for chemical examination. The Respondent No.2 victim and her friends are medically examined through the Medical Officer. The medical report corroborates about sexual assault on the victims.

14. Needless to say that as per contents of FIR, the first incident of castiest slur to the Victim at the hands of appellant/ accused occurred on the road, when she and her friends were on

their way to house after the College was over and second incident of castiest slur appeared to occurred in the lodge. The lodge and the road are public places and it may come within the public view.

15. In the case of **Kiran Vs. Rajkumar, 2025 SCC OnLine 1886**, the Hon'ble Supreme Court held that, if the offence under Section 3 is committed within the public view, bar is created under Section 18 of the Act to enlarge the appellant/ accused on anticipatory bail under Section 438 of the Code of Criminal Procedure, which is equivalent to Section 482 of the BNSS, 2023.

16. Needless to say that, as per the contents of F.I.R., the present appellant/ accused committed forcible sexual intercourse with the respondent No.2 victim and castiest slur in public view. Since the offence is pertaining to rape, therefore, it is necessary to conduct the medical examination and necessary samples of the appellant/ accused and in absence of the same offence will remain unproved. Further custody of the present appellant is required for interrogation purpose and recovery of evidence like his cell phone, memory card etc.

17. It is the matter of record that, on 7/10/2025, this Court passed the following order :

“1. Though the service to Respondent No.2 is still awaited. Mr. Suraj Mantri, learned Advocate for the Appellant is insisting for protection by way of ad-interim order.

2. Mr. D. B. Bhange, learned APP has made available the investigating papers for the perusal of this Court. Upon examining the same, a case for grant of ad-interim protection is made out. Accordingly, ad-interim protection is granted in terms of prayer clause (e).

3. In the meanwhile, there shall be ad-interim order in the following terms :-

A] Till the next date, in the event the Appellant is arrested in connection with FIR No.0428 of 2025 dated 22nd July 2025, registered with Ardhapur Police Station, District Nanded, he shall be released on bail on furnishing PR bond of Rs.20,000/- with two sureties in the like amount.

B] The Appellant shall remain present before the investigating officer as and when required by the investigating officer.

C] The Appellant shall co-operate with the investigation, including producing all documents in his possession, as may be demanded by the investigating officer.

D] The Appellant shall not influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence.

4. Needless to say, violation of any of the aforesaid conditions may result in this order being cancelled.

5. List on 4th November 2025. Ad-interim protection granted today to continue till the next date.

6. In the meantime, the concerned investigating officer shall submit the report regarding the service of

notice upon Respondent No.3.”

18. The prosecution has filed reply affidavit and contended that, the appellant/ accused never visited the investigating officer in compliance of order dated 07/10/2025. The Appellant/Accused has not furnished bail bonds, sureties. So also, the appellant/ accused has not co-operated with the investigating officer. The Appellant accused never made available himself for the interrogation purpose or for seizure evidence.

19. The appellant has filed affidavit dated 7/4/2026 and stated that, after passing of the order dated 7/10/2025, he had been to the investigating officer Mr. Danial Ben, the Dy. Superintendent of Police, however, said investigating officer told him that, the said interim order is in respect of “in the event of arrest”, therefore, there is no need to furnish the surety and bail bonds. The appellant further contended that, on 21/2/2026, he had received a phone call, therefore, he visited the Police Station for the purpose of investigation in compliance of order dated 10/2/2026, passed by this Court. So also, he had visited to record his statement in respect of another Crime No.427/2025. However, he was not called upon to enter into the bail bonds. The appellant

has produced the photo copies of Geotag photographs, wherein it shows that, the present appellant/ accused snapped three photographs by standing in front of the office of investigating officer, Sub-Divisional Police Officer, Nanded.

20. The Police Sub-Inspector attached with office of Sub-Divisional Police Officer, Nanded, has filed additional affidavit-in-reply and made a statement on affidavit that, in pursuance of order dated 10/2/2026, he has already filed reply, but again on 5/3/2026, this Court directed to file additional affidavit, exploring the circumstances and the event after the order passed by this Court on 7/10/2025. In the additional reply affidavit, the police officer made a statement on oath that, the present appellant/ accused has not complied with the terms and conditions of order dated 7/10/2025 and no such order was communicated at any time before the investigating officer. So also, the present appellant/ accused did not remain present for the investigation purpose.

21. It is further canvassed that, the photo copies of the photographs do not show that the present appellant/ accused met the investigating officer. The present appellant/ accused has not complied with the terms and conditions of the ad-interim order

dated 7/10/2025 and freely roaming in the society without compliance of the terms and conditions of the order dated 7/10/2025.

22. It is trite settled principle of law that, if the appellant/ accused did not comply with the ad-interim anticipatory bail and he did not furnish the bail bonds, sureties and did not remain present before the investigating officer for the investigation purpose, in that event, said order cannot be continued. Nonetheless, as per the procedure, after the ad-interim anticipatory bail is granted to the accused, in that event, it is necessary on the part of the accused to obtain Hamdast/Dasti from the Court or Certified Copy of said order of ad-interim bail and to produce it before the concerned investigating officer to demonstrate that, he has been released on ad-interim anticipatory bail. So also, the appellant/ accused is required to furnish bail bonds and sureties and to comply with other terms and conditions of the bail order. However, the appellant/ accused has brought nothing on record to show about compliance of the ad-interim order dated 7/10/2025 passed by this Court.

23. Since the F.I.R. No.428/2025 is registered against the present appellant/ accused for the offences punishable under

Sections 64(1), 351(2), 351(3) of the BNS, 2023, therefore, custodial interrogation of the appellant/ accused is necessary to collect the evidence including the medical examination. Further, as per the contents of the F.I.R., the offences punishable under Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Atrocities Act are attracted, therefore, in my view, the bar is created under Section 18 of the Atrocities Act to enlarge the appellant/ accused on anticipatory bail.

24. On 3/9/2025, the learned Trial Court passed the impugned order and held that though the appellant/ accused having knowledge that the victim is belonging to Scheduled Caste, in spite of said fact, the appellant/ accused taken her at hotel/lodge and committed forcible sexual intercourse. Therefore, there is a bar under Sections 18 and 18-A of the Atrocities Act to enlarge the appellant/ accused on anticipatory bail. Further, the custodial interrogation of the present appellant/ accused is required to lit discovery of the offence.

25. In view of the above discussion, I do not find that the appellant has made out substantial ground to enlarge him on anticipatory bail. Accordingly, I proceed to pas the following order :

ORDER

- (i) The Criminal Appeal No.690/2025 is hereby dismissed.
- (ii) The ad-interim order dated 7/10/2025 stands vacated.

(Y.G. KHOBRAGADE, J.)

fmp/-