

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.2589 OF 2023**

Dinanath Manik Katkar ...Applicant

vs.

The State of Maharashtra and Another ...Respondents

Ms. Pooja Agarwal, for the Applicant.

Mr. M.G. Patil, APP, for the Respondent/State.

Mr. Nitin Satpute a/w. Ms. Arti Bajpai, Ms. Shobha Budhivant, Mr. Deepak S., for Respondent No. 2.

Mr. Pravin Sirsat, PSI, Barshi City police station present.

**CORAM : N. J. JAMADAR, J.**

**DATE : SEPTEMBER 13, 2023**

**P.C.:**

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 607 of 2023 registered at Barshi City police station for the offences punishable under sections 354, 354-D, 385, 506, 509 read with 34 of Indian penal Code, 1860; section 12 of the Protection of Children from Sexual Offences Act, 2012 (the Act, 2012) and sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC and ST Act, 1989).

3. The applicant has invoked the provisions contained in section 438 of Code of Criminal Procedure, 1973 (the Code) on the ground that the provisions of the Act, 2012, being a later enactment, prevail over the provisions of the SC and ST Act, 1989 and therefore though there are allegations of commission of offences under SC and ST Act, 1989, the applicant is not required to prefer an appeal under section 14A of the Act, 1989.

4. The learned counsel for the applicant placed reliance on a Division Bench judgment of this Court in the case of **Gorakshnath @ Samadhan Navnath Pagar vs. The State of Maharashtra and Another, Criminal Appeal No. 362 of 2021 Dated 24<sup>th</sup> November, 2021** to bolster up the submission that an application for pre-arrest bail under section 438 of the Code is maintainable before this Court where the Court of Session declined to exercise the discretion in favour of the applicant who has been arraigned for the offences punishable both under SC and ST Act, 1989 and the Act, 2012.

5. There can be no dispute about the position in law as regards the enactment which prevails where both the enactments contain non obstante clauses. It is the later enactment which prevails as the legislature is presumed to be aware of the previous enactment

containing a non obstante clause and yet chose to give overriding effect to the later enactment. However, for the applicability of this principle, offences punishable under the Act, 2012 must be prima facie made out.

6. In the case at hand, the allegations against the applicant qua the children are that in the procession there were girls as well and the applicant had video-graphed the dance of ladies and girls with a malicious intent. Rest of the allegations predominantly pertain to acts and conduct which fall within the mischief of the provisions contained in SC and ST Act, 1989 including the alleged outraging of the modesty of a member of Schedule Caste and hurling of abuses with reference to the caste in public view.

7. Apart from a passing reference that there were girls in the procession and they were also video-graphed, there is no other allegation which would prima facie fall within the dragnet of section 12 of the Act, 2012.

8. In the circumstances, it would be appropriate that the applicant prefers an appeal as envisaged by section 14A(4) of the SC and ST Act, 1989.

9. At this stage, the learned counsel for the applicant seeks leave to convert the application into an appeal.
10. Leave granted.
11. Necessary amendment be carried out forthwith.
12. Liberty to mention before the appropriate Bench.

**(N. J. JAMADAR, J.)**