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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1188 OF 2023

Deepak Annasaheb Patil

APPELLANT

VERSUS

The State of Maharashtra Through Police
Inspector Anandnagar Police Station
Dharashiv and Another

RESPONDENTS

.....
Mr. V. D. Salunke h/f Mr. Mayur Salunke, Advocate for appellant
Mr. S. B. JadhavAPP for respondent - State
Mr. Ajinkya Kale for Talekar and Associates for respondent No.2
.....

WITH
CRIMINAL APPEAL NO.1109 OF 2023

Shivaji Bhausahab Kale and Others

APPELLANTS

VERSUS

The State of Maharashtra Through Police
Inspector Anandnagar Police Station
Dharashiv and Another

RESPONDENTS

.....
Mr. V. D. Salunke, Advocate for appellant
Mr. S. B. JadhavAPP for respondent - State
Mr. Ajinkya Kale for Talekar and Associates for respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 6th FEBRUARY, 2024
PRONOUNCED ON : 27th FEBRUARY, 2024

ORDER :

1. By these appeals, filed under Section 14-A of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter, for short "Atrocities Act"), appellants challenge orders passed by learned Special Judge (Atrocity), Osmanabad in Criminal Bail Application Nos.614 of 2023 and 621 of 2023.

2. Prosecutorix, who belongs to Schedule Caste, lodged FIR on 3rd November, 2023, alleging that she had purchased a motor for bore-well from the shop of Dilip Bhausaheb Kale, at that time, he had obtained her cellphone number for mentioning it on the bill. Thereafter, he contacted her on her cellphone and told her that she is staying alone and he has sympathy for her. Thereafter, while prosecutorix was alone, he came to her house and when she went to kitchen to bring water, he embraced her from behind. When she tried to push him, he gagged her and threatened that if she raises hue and cry or opposes, she will be killed and if she shouts, she will be defamed. Then he forcibly established physical relations with her. Thereafter, from time to time, he used to come to her home and by taking name of her caste, used to threaten her that she will be killed and used to forcibly keep physical relations with her, against her wish. Prosecutorix, being fed up with the atrocities committed by Dilip Kale, went and told her sufferings to Dilip's brother, Shivaji Kale.

Shivaji also abused her in the name of her caste and assaulted her with fists and kick blows. She, therefore, lodged complaint with Barshi Police Station against appellant Shivaji. Prosecutorix also informed wife and son of Dilip Kale about the acts done by Dilip. Thereafter, on 8th October, 2023, family members of Dilip Kale called her at his cousin's house where, Dilip Kale, Shivaji Kale, Ketan Kale, Sharmila Kale and two others were present. When she went there, Dilip Kale and his relatives called name of her caste and threatened and assaulted her with fists and kick blows. On 12th October, 2023, while prosecutorix was at her home, one unknown boy gave message to her that Dilip Kale and his relatives have called her in the Court to settle the matter. When she went at Osmnabad Court, appellant Deepak Patil took her towards Panchayat Samiti Road and abused her by taking name of her caste and assaulted her with fists and kick blows.

3. After registration of the crime, appellants Shivaji, Ketan and Sharmila preferred Criminal Bail Application No. 614 of 2023 and appellant Deepak Patil preferred Criminal Bail Application No. 621 of 2023, under section 438 of the Criminal Procedure Code, which are rejected by the learned Special Judge. Hence, the present appeals.

4. Heard learned advocate for appellants, learned APP for the

State and learned advocate for respondent No.2 – prosecutrix.

5. From the allegations made in the FIR, it is clear that allegations of commission of rape are against accused No.1 Dilip Kale, who has allegedly committed offence during the period between 1st March, 2016 to 12th October, 2023. There is inordinate, unexplained delay in lodging FIR. From FIR, *prima facie*, possibility of consensual relations of prosecutrix with accused No.1 Dilip Kale cannot be ruled out.

6. Allegations against present appellants are that they have abused and threatened prosecutrix by taking name of her caste and assaulted her by slaps and kick blows. Appellant Shivaji Kale is brother, appellant Ketan is son, appellant Sharmila is wife and accused Deepak Patil is relative of accused No.1 Dilip Kale. There are no allegations that appellants are involved in commission of offence punishable under section 376 of the Indian Penal Code.

7. Allegations against appellant Shivaji Kale are that, when prosecutrix went to his house to complain about acts done by accused Dilip Kale, at that time, he abused her in the name of her caste and assaulted her with fists and kick blows. Since this alleged incident has taken place at the house of appellant Shivaji, it is not within public view. Allegations in the FIR are

vague and it is not stated as to when this incident has taken place.

8. In the FIR, it is alleged against appellants Ketan and Sharmila that they, along with their relatives, abused prosecutrix in name of her caste and threatened her at the house of one relative of accused No. 1 Dilip Kale. Therefore, as per allegations in FIR, this incident also has taken place at the house of relative of accused and not within public view.

9. Allegations against accused Deepak Patil are that he took prosecutrix on the road towards Panchayat Samiti and abused her, by taking name of her caste and threatened her. It is not stated in the FIR that anybody was present there while she was insulted by appellant Deepak, by taking name of her caste. Therefore, this incident also cannot be said to have taken place within public view.

10. Ratio laid down in "***Hiten Varma V/s State of Utarakhand and Another***" 2020 (10) SCC 710, wherein it is held that, "*all insults or intimidation to person would not be offence under Act unless such insult or intimidation has taken place in any place within public view*", is squarely applicable to the facts of the present case. Considering the allegations, referred to above,

since all the alleged incidents of insult of prosecutrix have taken place either at the house or same is not witnessed by anyone, *prima facie* offence punishable under the Atrocities Act are not attracted against present appellants. Therefore, bar under section 18 of the Atrocities Act would not be attracted against them.

11. All the appellants are reputed persons in the society. Appellant Shivaji is a retired professor. If arrested, image of appellants will be tarnished in the society. Their custodial detention is not necessary for any recovery.

12. Since in the present case, alleged incidents of insult have not taken place at a place within public view and as there are no allegations against appellants that they are involved in commission of offence punishable under section 376 of the Indian Penal Code, appellants are entitled for anticipatory bail.

13. Hence the following order:

ORDER

- A. Both the appeals are allowed.
- B. Impugned orders passed by learned Special Judge (Atrocity) Osmanabad in Criminal Bail Applications No. 614 of 2023 and 621 of 2023 are quashed and set aside.

- C. In the event of arrest of appellants in Crime No. 399 of 2023 registered with Anandnagar Police Station, District – Osmanabad for offence punishable under section 376 (2) (n), 323, 504, 506 read with 34 of the Indian Penal Code and under section 3 (1) (r), 3 (1) (s), 3 (2), 3(v), 3 (1) (w) (i), 3 (1) (w) (ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, they be released on furnishing PB and SB of Rs.15,000/- with one surety each in the like amount.
- D. Till filing of the charge sheet, appellants shall attend the concerned police station as and when called by the Investigating Officer.
- E. Appellants shall not tamper prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE