

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 635 OF 2017

Shri Sunil Kacharu Boraste	...	Appellant
Vs.		
The State of Maharashtra	...	Respondent

Mr.R.N.Gite, for the Appellant.
Mr.A.R.Kapadnis, APP, for the State.

**CORAM: RANJIT MORE &
SMT.SADHANA S.JADHAV, JJ.**
DATE : 8th AUGUST, 2017.

P.C.

Heard the learned counsel for the appellant and the learned
APP.

2. The above Appeal is filed challenging the legality and propriety of the Judgment and order dated 20.7.2017 passed by the learned Addl. Sessions Judge, Nashik, below Criminal Bail Application No.870 of 2017 rejecting the bail application.

3. FIR bearing C.R. No.179 of 2017 came to be registered with Dindori Police Station, District Nashik at the instance of one Sampat Jadhav for the offences punishable under Sections 457, 435, 295, 504, 506 read with Section 34 of the Indian Penal Code and Section 3(1)(r)(s)(t) and

3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the 'Atrocities Act') As stated above, the appellant had filed the above referred application for bail. However, the same came to be rejected by order dated 20.7.2017. Hence, the present Appeal is filed for anticipatory bail.

4. We have perused the FIR in question. The FIR discloses that the complainant belongs to the Scheduled Caste and resides at land Gat No.183 and 185 situated at Dindori along with his family members. The present applicant is having a land Gat No.266 adjoining the land of the complainant. It is alleged in the FIR that on 22.6.2017, the appellant along with his wife went to bed at about 10 p.m. At that time, he had heard commotion from the land Gat No.266. Therefore, he came out of his house to see what had happened. The appellant and 3-4 unknown persons abused him in the name of caste and threatened to kill and, therefore, sensing the trouble he ran away by locking his house. The FIR further reveals that the appellant returned back to his land at about 7.30 p.m. on 23.6.2017 he found that the lock of his house was broke open. Photographs of Lord Buddha and Dr. Babasaheb Ambedkar were lying on the ground in a broken condition. He also found a document relating to the appeal pending in the District Court and cash amount of Rs.30,000/- were burnt in the Verandah.

5. Section 3(1)(r) of the said Atrocities Act reads thus :-

“3. Punishments for offences of atrocities – (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

Section 3(2)(v) of the said Atrocities Act reads thus :-

“(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;”

6. So far as the offence under Section 3(1)(r) of the said Atrocities Act is concerned, the offence is required to be committed in any public place within public view. Perusal of the FIR indicates that it is not alleged that the appellant had abused in any public place within public view.

7. So far as the offence under Section 3(1)(t) of the Atrocities Act is concerned, apart from bald allegation, there is no evidence worth the name at this stage to support the complainant's version.

8 In order to attract the provisions of sub-clause (v) of Section 3(2) of the said Atrocities Act, the offence under IPC is required to be punishable for a term of ten years or more. None of the offence alleged

against the appellant under IPC is punishable for a term of ten years or more.

9. It appears that there is a litigation between the predecessor-in-title of the appellant and the present complainant which he lost. Therefore, he had filed an appeal which is pending in the District Court, Nashik.

10. Taking into consideration the totality of the facts and circumstances of the case, we are of the considered opinion that the appellant has made out a case for anticipatory bail. Hence, the following order :-

ORDER

(i) The Appeal is allowed.

(ii) The impugned Judgment and order dated 20.7.2017 passed by the Addl. Sessions Judge, Nashik in Criminal Bail Application No. 870 of 2017 is quashed and set aside.

(iii) In the event of arrest of the appellant – Sunil Kacharu Boraste in C.R. No.179 of 2017 registered at Dindori Police Station, District Nashik, he shall be released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

The Appeal stands disposed of.

[SMT. SADHANA S.JADHAV, J.]

[RANJIT MORE,J.]