

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.786 OF 2017

SANJAY MADHAV JADHAV AND ORS.)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Abdul Latif Choudhari I/b. Mr.Subhash Hulyalkar, Advocate
for the Appellant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 10th OCTOBER 2018

ORAL JUDGMENT :

1 Heard. Admit. Heard finally.

2 This is an appeal under Section 14A of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,
challenging the order dated 7th September 2017 passed by the
learned Additional Sessions Judge, Solapur, in Criminal

Anticipatory Bail Application No.821 of 2017, whereby prayer of the appellants for anticipatory bail in Crime No.462 of 2017 registered at the instance of the First Informant / respondent no.2 for offences punishable under Sections 354, 504, 506 read with 34 of the Indian Penal Code as well as under Sections 3(1)(r)(s)(w) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered against them at Police Station Vijapur Naka, came to be rejected.

3 Heard the learned counsel appearing for the appellants/accused. He drew my attention to the letter dated 11th September 2017 given by Principal of Swami Vivekananda Institute of Technology, Solapur, and submitted that on 29th July 2017 from 10.00 a.m. to 1.00 p.m., appellant no.1 was present in the said college. It is further argued that statement of Milind Jakkal, a neighbour, shows that he had not seen any dispute between the prosecuting party as well as appellants, nor was he informed by anybody about such dispute. With this, the learned counsel argued that no such incident, as alleged, took place

because neighbour named Milind Jakkal is stating that he had not seen any such dispute nor was he informed by anybody else. It is further argued that the incident in question took place inside the house and therefore, it is not within a public view.

4 The learned APP opposed the application by contending that there are specific averments in respect of casteist abuse and intentional humiliation to a member of the Scheduled Castes by appellants, and therefore, the appellants are not entitled for anticipatory bail.

5 Brief facts leading to the registration of the First Information Report (FIR) against the appellants are thus :

(a) The incident in question allegedly took place on 29th July 2017 in the Sai Shraddha Apartments, Solapur. Appellants are residents of the said building, so also the First Informant / respondent no.2 Anita Bhutale. She is the Secretary of the said housing society of the said appellants. The incident in question took place on 29th July 2017. The complaint

thereof was lodged on 31st July 2018 by respondent no.2 Anita Bhutale. After necessary inquiry, her statement was recorded on 14th August 2017 which was then considered as FIR of the subject crime. Averments in the FIR are to the effect that appellant no.1 Sanjay Jadhav was in arrears of maintenance and he as well as his family members viz. appellant nos.2 and 3 used to pick up quarrel with respondent no.2 on that issue frequently. It is averred by the First Informant / respondent no.2 that at about 12.30 p.m. of 29th July 2017, all appellants had gathered outside the apartment of respondent no.2. Appellant no.2 Ambika Jadhav and appellant no.3 Yallava @ Yallubai Gaikwad were abusing in filthy language. Upon seeing the respondent no.2, they uttered that she had washed off the rangoli drawn outside their house. They both uttered that persons belonging to Mahar caste should be kept outside the boundary of the town as was used to be done earlier. At that time, as per version of the First Informant / respondent no.2, appellant/accused no.1 addressed her as a prostitute

and threatened her. Appellant/accused nos.2 and 3 are stated to have insulted the First Informant/respondent no.2 by asking her to sleep with appellant no.1.

6 The incident in question, as such, took place outside the block of respondent no.2 / First Informant. The FIR shows that except the appellants, nobody else was present there. The learned APP pointed out that brother of respondent no.2/ First Informant was present subsequently and had intervened in the matter.

7 Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, deals with intentional insult or intimidation with intent to humiliate a member of the Scheduled Castes or Scheduled Tribes in any place within public view. Section 3(1)(s) of the said Act deals with penal consequences for abuse to any members of the Scheduled Castes or Scheduled Tribes by caste name in any place within public view. Section 3(1)(w)(ii) of the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act, 1989, makes the act of using words, acts or gestures of a sexual nature towards a woman belonging to Scheduled Castes or Scheduled Tribes knowingly that she belongs to Scheduled Castes or Scheduled Tribes punishable with the consequences provided therefor. Section 3(2)(va) deals with scheduled offences. Commission of any scheduled offences against the member of the Scheduled Castes or Scheduled Tribes is made punishable by this provision.

8 The incident in question happened outside the block of the respondent no.2 / First Informant. It was not witnessed by any public person. As such, it cannot be said that the same took place in any place within public view. However, so far as provisions of Section 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are concerned, the said offence does not require a place within public view. Mere use of words, acts or gestures of sexual nature towards a woman belonging to Scheduled Castes or Scheduled Tribes knowing that she belonged to such caste or tribe is

sufficient for making out the said offence. The FIR contains specific averments by the appellants/accused persons of using the words of sexual nature towards the First Informant / respondent no.2, who belongs to the Scheduled Castes.

9 In this view of the matter, it cannot be said that bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand.

10 The appeal, as such, is devoid of merits. Therefore, the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)