

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.55 OF 2018

BHASKAR KRISHNA RAUT)...APPELLANT

V/s.

ANITA KADURAM WAGH AND ANR.)...RESPONDENTS

Mr.Hrishikesh Mundargi, Advocate for the Appellant.

Mr.Shashank Borade, Advocate for Respondent No.2.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 19th OCTOBER 2018

ORAL JUDGMENT :

1 Heard. Admit. Heard finally.

2 The appellant/accused no.4 in Crime No.I-299 of 2017
for offences punishable under Sections 354, 509, 323, 504, 503(2)

read with 34 of the Indian Penal Code as well as under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by this appeal is challenging the order dated 8th January 2018 passed by the learned Special Judge, Kalyan, on application for Anticipatory Bail bearing no.1779 of 2017, whereby his claim for anticipatory bail came to be rejected.

3 Heard the learned counsel appearing for the appellant/accused. He drew my attention to finding of the learned Special Judge found in paragraph 7 of the impugned order to the effect 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. With this, the learned counsel argued that non-cognizable complaint lodged immediately after the incident makes it clear that no case for offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was made out. It is further argued that for rest of the offences, custodial interrogation of the

appellant/accused is not warranted. Infact, there was no firearm with the appellant/accused.

4 The learned APP opposed the appeal by contending that the offence took place at a public place. There are eye witnesses to the incident and revolver is required to be seized.

5 The learned counsel appearing for respondent no.1 / First Informant argued that on the date of occurrence, when the report was sought to be lodged, only report of non-cognizable case was taken and therefore, on the next day, when the First Informant approached the police station with 50 more persons with her, the FIR came to be lodged. The learned counsel further argued that the non-cognizable complaint reflects threatening by a gun.

6 I have considered the submissions so advanced. Finding of the learned Special Judge, Kalyan, to the effect 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 has attained finality for the purpose of this appeal and the same is not challenged either by the First Informant or by the State by filing appropriate proceedings. The application for anticipatory bail of the appellant was rejected by the learned Special Judge for effecting recovery of revolver. It is held that for this purpose, custodial interrogation is necessary.

7 First version of the incident is reflected in the report of non-cognizable case lodged by Krushna Ughde – nephew of the respondent / First Informant. Perusal of this report of non-cognizable case shows that there was threatening to kill by a gun. This report nowhere discloses that somebody from the opponent's mentioned therein was in possession of the gun. It is not averred in this report that the appellant was holding the gun. For mere effecting recovery, custodial interrogation is not warranted. Considering the extent of improvement over this report of non-cognizable case reflected from the First Information Report (FIR), I am of the considered opinion that custodial interrogation of the

present appellant is not warranted. The learned trial court erred in holding so. Therefore the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 8th January 2018 passed by the learned Special Judge, Kalyan, in Anticipatory Bail No.1779 of 2017, is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellant/accused is allowed.
- iv) In the event of arrest of the appellant/accused in Crime No.I-299 of 2017 registered with Police Station Shivaji Nagar, for offences punishable under Sections 354, 509, 323, 504, 503(2) read with 34 of the Indian Penal Code as well as under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant/accused be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.

- v) The appellant/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vi) The appellant/accused should not threaten the First Informant / respondent no.1 in any manner.
- vii) The appellant/accused should attend the concerned Police Station as and when required by the Investigating Officer for the purpose of investigation of this crime.
- viii) The application is disposed off.

8 Needless to mention that all these observations are prima facie in nature and shall have no bearing on the trial.

(A. M. BADAR, J.)