

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.764 OF 2018

SHAILENDRA PRABHAKAR DIXIT)...APPELLANT

V/s.

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

Mr.Anup Lahoti, Advocate for the Appellant.

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

None for Respondent No.2.

Mr.S.P.Patil, Police Havildar 5466, Police Station Sahakar Nagar,
Pune City, present in court.

CORAM : A. M. BADAR, J.

DATE : 24th SEPTEMBER 2018

ORAL JUDGMENT :

1 Admit. Heard finally. None for respondent no.2/ First
Informant, despite service.

2 By this appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant/accused is challenging the order dated 6th June 2018 thereby rejecting his application for grant of anticipatory bail in Crime No.70 of 2018 for offences punishable under Sections 323, 504 of the Indian Penal Code and under Sections 3(1)(4)(5) and 3(2)(VA) of the Scheduled and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 Heard the learned counsel appearing for the appellant/accused. He vehemently argued that the appellant himself is the victim of the crime and he was required to be hospitalized at the Government Hospital at Pune from 3rd March 2018 to 6th March 2018 because of assault on him by the First Informant and his employer named Rajendra Shilimkar, who happens to be Corporator of the area where the incident in question allegedly took place. The learned counsel further argued that even statement of star witnesses namely Hariprasad Bhandari and Chetan Adhikari do not reflect commission of any offence

punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Therefore, in submission of the learned counsel appearing for the appellant, the appeal deserves to be allowed. As against this, the learned APP argued that First Information Report (FIR) lodged by respondent no.2 Anant Tavar reflects casteist abuses with the intention to humiliate the First Informant by the appellant/accused. Therefore, he is not entitled for anticipatory bail.

4 I have carefully considered the submissions so advanced and also perused the charge-sheet. The First Informant / respondent no.2 appears to be an employee of Rajendra alias Abba Shilimkar who is Corporator of the area where Shankar Maharaj Math, Pune, is situated. The incident in question took place on 4th March 2018. The appellant has also lodged the FIR on the very same date while taking treatment in the Sassoon Hospital, Pune. His statement came to be recorded at 6.50 a.m. of 4th March 2018 by police when the appellant was taking treatment in that hospital. The averments in the FIR lodged by the

appellant/accused in the morning hours of 4th March 2018 are to the effect that at about 8.30 p.m. of 3rd March 2018, he was assaulted by Rajendra Shilimkar, Anant Tavar, Girish Kshirsagar and Nilesh Deghavkar by means of bamboo sticks, stones, fist and kick blows. The documents filed along with the application reveal that the appellant was admitted to Bed No.28 of Ward No.7 at the Sassoon General Hospital, Pune, which happens to be a Government Hospital and on the basis of his report, Crime No.71 of 2018 came to be registered against Rajendra Shilimkar and others by Police Station Sahakar Nagar.

5 As against this, the subject FIR came to be lodged by respondent no.2 Anant Tavar on 4th March 2018. It contains averments that when the First Informant had been to Shankar Maharaj Math at about 9.05 p.m. of 3rd March 2018, the appellant/accused gave casteist abuses to him in presence of Chetan Adhikari and Hariprasad Bhandari. It is specifically averred that the First Informant / respondent no.2 had intervened when the appellant was giving abuses to Chetan Adhikari and

Hariprasad Bhandari. On this backdrop, if statements of these two star witnesses namely Hariprasad Bhandari and Chetan Adhikari are perused, then it is clear that both these witnesses are not stating that the appellant/accused had hurled casteist abuses to respondent no.2/ First Informant Anant Tavar.

6 In this view of the matter, prima facie it is clear that the FIR lodged by respondent no.2/First Informant is a counter blast to the FIR lodged by the appellant/accused against Rajendra Shilimkar, who happens to be the employer of the respondent no.2/ First Informant. The allegations seem to be motivated and therefore, bar of Section 18 of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable in view of judgment of the Honourable Apex Court in the matter of **Dr.Subhash Kashinath Mahajan vs. State of Maharashtra and Another**¹. The impugned order, therefore, cannot be sustained. As such, the following order.

ORDER

i) The appeal is allowed.

¹ Criminal Appeal No.416 of 2018 decided on 20th March 2018

- ii) The impugned order dated 6th June 2018 passed by the learned Sessions Court, Pune, in Anticipatory Bail Application No.1181 of 2018 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellant/accused is allowed.
- iv) In the event of his arrest in Crime No.70 of 2018 for offences punishable under Sections 323, 504 of the Indian Penal Code and under Sections 3(1)(4)(5) and 3(2)(VA) 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 shall not in any manner tamper with the prosecution witnesses.
- vii) The appellant/accused should attend the concerned police station as and when directed by the Investigating Officer for the purpose of investigation.
- viii) The appeal is disposed of accordingly.

(A. M. BADAR, J.)

Arti Vilas
Khatate

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Arti Vilas Khatate
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