

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.596 OF 2017

Arbaj Ayub Mogal & Ors. ... **Appellants**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Milind Deshmukh, Advocate for the Appellants.

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

Mr.Ghanasham S. Jadhav, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 30th NOVEMBER 2018.

ORAL JUDGMENT :

1 By this appeal, the appellant/accused persons in Crime No.381 of 2017 registered against them at Police Station, Yavat, District Pune at the instance of respondent No.2 for the offences punishable under Sections 143, 147, 148, 149 and 324 of the Indian Penal Code, under Section 3(1)(r), 3(1)(s), 3(2)(va) and 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Corruption) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity) as well as under Section 7(1)(d) of the

Protection of Civil Rights, 1955, are challenging the Order dated 05/07/2017 passed by the learned Special Judge, Baramati in Anticipatory Bail Application No.374 of 2017 thereby rejecting their claim for anticipatory bail.

2 Heard the learned Counsel appearing for the appellants/accused and the learned Additional Public Prosecutor for the respondent/State.

3 Admit.

4 Heard finally considering the fact that the appeal is pertaining to rejection of the claim of the appellants/accused for anticipatory bail.

5 The learned Counsel appearing for the appellants/accused argued that the appellants/accused have already suffered due to *matka* business of the prosecuting party and in fact a rally was organized against the prosecuting party. He further argued that on 19/04/2017, as even reflected from the FIR, son of appellant/accused No.6 Yusuf Abdul Rahiman Pathan namely Moin Yusuf Pathan. was assaulted by respondent No.2 and his cousin. On 22/08/2016, the appellant No.6 Yusuf Abdul Rahiman Pathan was assaulted by one Pawar, who is partner of the respondent No.2 Gokul Khalse. It is further argued that

externment proceedings are taken up against respondent No.2 Gokul Khalse. By now, with passage of time, the charge-sheet has already been filed and, therefore, the application for anticipatory bail was wrongly rejected by the learned Special Court. The appellants are students.

6 The learned Advocate appearing for respondent No.2 – First Informant Gokul Khalse opposed the appeal by contending that the FIR reflects commission of offences of atrocities and, therefore, the application for anticipatory bail cannot be entertained.

7 The learned Additional Public Prosecutor supported the impugned Order of rejection of anticipatory bail.

8 I have carefully considered the submissions so advanced and perused the record made available.

9 Section 3(1)(r) of the Atrocities Act, deals with offence of atrocities of intentional insult or intimidation with an intent to humiliate the member of scheduled caste or scheduled tribe in any place within public view. Abusing any member of the scheduled caste or scheduled tribe in caste name in any place within public view is also an offence of atrocities as envisaged by Section 3(1)(s) of the Atrocities Act. Section 3(2)(va) of the Atrocities Act deals

with commission of scheduled offence against the person or property belonging to the member of the scheduled caste or scheduled tribe. On this backdrop, it is in FIR of respondent No.2 Gokul Khalse that on 17/06/2017 at about 10.30 p.m., when they were sitting in the platform of shop of one D.B.Saraf at Yavat, the appellant/accused came there armed with dangerous weapons including iron pipe, wooden bamboo, etc. He averred that then they all assaulted him by means of weapons carried by them as well as by fist and kick blows. As per averments in the FIR, the appellants/accused persons were giving casteist abuses to the appellants/accused, who belong to a *mang* caste which is a scheduled caste.

10 Section 18 of the Atrocities Act creates a bar from entertaining the application under Section 438 of the Code of Criminal Procedure if *prima facie* case for offence of atrocities is made out. The FIR itself discloses commission of alleged offence under the Atrocities Act and, therefore, the learned Special Judge rightly rejected the application for anticipatory bail moved by the appellants/accused vide Order dated 05/07/2017 passed in Anticipatory Bail Application No.374 of 2017.

11 There is no reason to interfere with the impugned order even if the charge-sheet is filed as the application under Section 438 of the Code of Criminal Procedure for the offence of

Atrocities Act, as prescribed by the Atrocities Act, cannot be entertained.

12 The appeal is devoid of merit. The appeal is dismissed.

(A.M.BADAR J.)