

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1041 OF 2018

Prakash Madhukar Mohite

Age : 32, Occu. Agriculture,

R/o.Gardi, Tal.Khanapur,

District-Sangli.

... **Appellant**

V/s.

1. The State of Maharashtra

(C.R.No.245/2018)

At the instance of Vita Wangi

Police Station, Sangli)

2 Ashatai Arun Sakate

R/o. Gardi, Khanapur, Vita,

Dist. - Sangli.

... **Respondents.**

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Mr.R.A.Naik i/b. Mr.Umesh R. Mankapure, Appointed Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent No.1/State.

Mr.Vikas Singh, Appointed Advocate for the Respondent No.2.

Mr.V.V.Gaikwad, Police Naik, B.No.75, Vita Police Thane.

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CORAM : A.M.BADAR J.

DATED : 30th OCTOBER 2018.

ORAL JUDGMENT :

1 The appellant/accused, by this appeal, is challenging the Order dated 13/06/2018 passed by the learned Special Judge, Sangli thereby rejecting the application for anticipatory bail preferred by the applicant in Crime No.245 of 2018 registered with Police Station Vita, District Sangli at the instance of respondent No.2/Ashatai Sakate for the offences punishable under Sections 323 and 324 of the Indian Penal Code as well as under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'Atrocities Act' for the sake of brevity).

2 Heard.

3 Admit.

4 Heard finally forthwith considering the fact that the appeal is challenging the Order rejecting the application for anticipatory bail.

5 Heard the learned Counsel appearing for the appellant/accused. He argued that in the light of Judgment of the learned Division Bench of this Court in the matter of ***Pradnya Pradeep Kenkare & Anr. v. State of Maharashtra***¹, it cannot be said that the incident took place at any place within public view. The FIR does not show that any independent public person had

1 2005(3) Mh.L.J. 368.

witnessed the incident. Therefore, bar of Section 18 of the Atrocities Act is not applicable to the case in hand. The learned Special Judge, Sangli, therefore, erred in rejecting the application.

6 I heard Shri.Vikas Singh, the learned Advocate appointed to represent the respondent No.2/ First Informant. He argued that there was no previous enmity between the parties and there is nothing to suggest that the respondent No.2 would rope in the appellant/accused falsely in the crime in question. Therefore, the offence of atrocity is made out and the appeal deserves to be rejected.

7 The learned Additional Public Prosecutor opposed the appeal by contending that in view of bar of Section 18 of the Atrocities Act, the appeal itself is not maintainable.

8 I heard the submissions so advanced and also perused case diary as well as impugned Order rejecting the application for anticipatory bail filed by the appellant/accused.

9 According to the prosecution case, motorcycle of the appellant/accused dashed the hen of respondent No.2/First Informant. Because of killing of hen by the appellant/accused, the respondent No.2/First Informant was insisting him to pay compensation of Rs.300/-. The alleged incident took place on

09/05/2018. The respondent No.2/First Informant has averred that when she was going towards her home, she questions him about the compensation amount. Upon that, the appellant/accused started giving casteist abuses to her and assaulted her. The respondent No.2/First Informant claimed that her relatives came there and they had seen the incident. The respondent No.2/First Informant claims to be belonging to the Scheduled Caste 'mang'. The prosecution has invoked the provisions of Section 3(1)(r)(s) of the Atrocities Act against the appellant/accused. These offences are required to be occurred in any place within public view. Perusal of the FIR does not show that the respondent No.2/First Informant claimed that the incident took place in a place within public view.

10 Case diary consists of statements of several witnesses. However, except respondent No.2/First Informant Ashatai Sakate and her sister-in-law Jayshree Sakate nobody else is stating that they heard any casteist abuses given by the appellant/accused to the respondent No.2/First Informant. The witnesses whose statements are found to be recorded by the Investigating Officer are relatives of the respondent No.2/First Informant. It is seen that the incident is not witnessed by any public person. In this view of the matter, it cannot be said that the incident took place in any place within public view.

11 At this juncture, it is apposite to quote the observations of the Division Bench of this Court in the matter of ***Pradnya Kenkare (supra)***. The relevant portion in paragraph 8 in the said Judgment reads thus :

“8The provisions of Section 3(1)(x) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being "within public view". The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under Section 3(1)(x) of the said Act. In the provision of law comprised under Section 3(1)(x) of the said Act, the word "view" refers to that of 'public' but prefixed by the expression "in any place within". Being so, the word "public" not only relates to the location defined by the word "place" but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an

offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under Section 3(1)(x) of the said Act.”

12 In this view of the matter, no *prima facie* case for the offence of Atrocities Act is made out and, therefore, bar of Section 18 is not applicable to the case in hand. Therefore, the Order :

ORDER

- (i) The Appeal is allowed.
- (ii) The impugned Order dated 13th June 2018 passed by the learned Special Judge, Sangli rejecting the application for anticipatory bail bearing Criminal Miscellaneous Application No.468 of 2018 is quashed and set aside.
- (iii) The application for anticipatory bail filed by the appellant/accused in the subject crime registered with Vita Police Station, District Sangli is allowed.
- (iv) In the event of his arrest in the crime No.245 of 2018 registered with Police Station Vita, District Sangli for the offences punishable under Sections 323 and 324 of the Indian Penal Code as well as under Section 3(1)(r)(s) of the Atrocities Act, the appellant/accused is directed to be

released on bail on his executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.

- (v) As a condition of this Order, the appellant/accused should not extend any threat inducement or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
- (vi) As a condition of this Order, the appellant/accused to cooperate the Investigating Officer in the investigation of the crime in question.
- (vii) As a condition of this order, the applicant/accused should not repeat commission of similar offence in future.
- (viii) The Appeal is disposed of accordingly.

(A.M.BADAR J.)