

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1046 OF 2018

SUYOG SANJAY THETE)...APPELLANT

V/s.

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

Mr.H.M.Inamdar, Advocate for the Appellant.

Ms.Taheera Qureshi, Appointed Advocate for Respondent No.2.

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

Mr.Rafique Afzal Pathan, Police Sub-Inspector, Nashik Taluka Police Station, present in court.

CORAM : A. M. BADAR, J.

DATE : 3rd OCTOBER 2018

ORAL JUDGMENT :

1 Heard. Admit. Heard finally.

2 This is an appeal challenging the order dated 12th July 2018 passed by the learned Additional Sessions Judge, Nashik, in Criminal Bail Application No.925 of 2018 filed by the appellant/accused thereby rejecting his claim for anticipatory bail in Crime No.35 of 2018 registered with Nashik Taluka Police Station for offences punishable under Sections 143, 147, 148, 149, 324, 504, 506, 447, 427 of the Indian Penal Code as well as under Sections 3(1)(r) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, registered at the instance of respondent no.2 Nirmala Potinde.

3 Heard the learned counsel appearing for the appellant/accused. He argued that bar of Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not applicable to the case in hand because of omnibus averments made in the First Information Report (FIR). No role is attributed to the appellant/accused in the crime in question. The appellant/accused is a young boy of 20 years of age and he is a student.

4 I have heard the learned APP appearing for the State. He argued that the FIR is describing the alleged offence and the appellant/accused has committed the offence punishable under Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act by committing the scheduled offence. Similar are the submissions on behalf of the learned counsel for the First Informant/respondent no.2.

5 I have considered the rival submissions. Averments in the FIR are to the effect that respondent no.2/First Informant Nirmala is belonging to Adivasi tribe and the appellant/accused belongs to Maratha caste. It is averred in the FIR that on 6th April 2018 the appellant/accused along with his father Sanjay Thete came at the field. They along with co-accused assaulted the First Informant and others by means of sticks. The appellant/accused threatened the First Informant by questioning her that she had sent him to jail by filing a case against him and he would kill her. The appellant/accused and his father then pelted stones at the JCB breaking its glass and had assaulted driver of the JCB.

6 I have also perused the case diary of the subject crime. Statement of the First Informant as well as other witnesses are recorded by the learned Judicial Magistrate First Class, Nashik, as per provisions of Section 164 of the Code of Criminal Procedure. Those statements are conspicuously silent about knowledge of the appellant/accused of the fact that the First Informant and others were belonging to Adivasi community. Neither those statements nor the FIR shows that the respondent no.2/First Informant belongs to the Scheduled Castes or Scheduled Tribes. There is no averment in the statements recorded under Section 164 of the Code of Criminal Procedure about the fact that the First Informant and other alleged victims are belonging to the Scheduled Tribes. It is not disclosed in the statements under Section 164 of the Code of Criminal Procedure that the appellant/accused was knowing the fact that the First Informant and other alleged victims of the crime in question were belonging to the Scheduled Tribes. Averments in the FIR are not disclosing any intentional insult or intimidation with intent to humiliate the members of the Scheduled Tribes. Similarly, it is not seen from the statements

recorded under Section 164 of the Code of Criminal Procedure that the appellant/accused was knowing that the First Informant and the other alleged victims of the crime in question are members of the Scheduled Tribes.

7 In this view of the matter, bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not applicable to the case in hand. The learned Additional Sessions Judge, Nashik, committed error in rejecting the application for anticipatory bail moved by the appellant/accused without deliberation on these aspects.

8 So far as the offences punishable under the Indian Penal Code are concerned, injuries suffered by the alleged victims of the crime in question are stated to be simple injuries by the Medical Officer. Considering the nature of offence, their custodial interrogation, as such, is not warranted. In the result, the following order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 12th July 2018 passed by the learned Additional Sessions Judge, Nashik, below Exhibit 1 in Criminal Bail Application No.925 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 arrest of the appellant/accused in Crime No.35 of 2018 registered with Nashik Taluka Police Station, at the instance of respondent no.2/First Informant Nirmala Potinde, 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 required by the Investigating Officer for the purpose of investigation.
- viii) The appeal is disposed off.

(A. M. BADAR, J.)

**Arti Vilas
Khatate**

Digitally signed by
Arti Vilas Khatate
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