

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.787 OF 2019

Narayan s/o Namdeo Jagtap
Age: 39 Yrs., occu. Agril.
R/o Tamaswadi, Tq.Newasa,
District Ahmednagar.

= **APPELLANT**

VERSUS

- 1) The State of Maharashtra
Through In-charge Police
Inspector, Newasa Police Station,
Tq.Newasa, Dist.Ahmednagar.
- 2) The Superintendent of Police
Ahmednagar.
- 3) Shri Chandrakant s/o Nandu Bhole
Age: 42 Yrs., occu. Labour,
R/o Tamaswadi, Tq.Newasa,
District Ahmednagar. = **RESPONDENT**

Mr.VD Sapkal, Adv. h/for Mr.AB Jagtap, Advocate for
appellant;

Mr.SJ Salgare, APP for Resp.Nos.1 & 2;

Mr. HD Deshmukh, Adv. For Resp.No.3

CORAM : P.R.BORA, J.

DATED : 26th August, 2019.

ORAL JUDGMENT

1. Heard finally. The appellant has preferred the present appeal against the order dated 30th July, 2019 passed by Additional Sessions Judge, Newasa in Criminal Misc. Application No.172/2019.

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2. The aforesaid application was filed by the appellant, seeking regular bail under Section 439 of the Code of Criminal Procedure (herein after referred to as Cr.P.C.) in C.R./No.306/2019 registered against him for the offences punishable under Sections 452, 294, 323, 504, 506 read 34 of Indian Penal Code and under Sections 3(1)(r) and (s) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the Atrocities Act). The learned Sessions Judge, vide the impugned order, has rejected the said application.

3. Shri Sapkal, learned counsel appearing for the appellant, submitted that the learned Sessions Judge, without properly appreciating the evidence, collected by the prosecution till date, rejected the application mainly for the reason that the allegations of commission of the offences under the Atrocities Act, are also levelled against the appellant. The another reason for rejecting the application by the said court appears to be pendency of investigation at the relevant time.

4. The learned counsel, taking me through the contents of the FIR, submitted that the said contents, even if as it is considered, no offence under Section 294 of IPC can be said to be made out. To attract the offence under Section 294 of IPC there must be an allegation and some material to show that the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place and has so caused an annoyance to others. In whole of the FIR, there is no such allegation. I have, therefore, no hesitation in holding that no offence under Section 294 of IPC can be made out from the contents of the FIR and the other material collected by the prosecution.

5. In so far as offence under Section 452 of IPC is concerned, this Court, while deciding Criminal Appeal No. 587/2019, filed by the present appellant with one another accused, has unequivocally held that, " from the contents of the FIR, no offence under Section 452 of IPC is made out and at the most, offence under Section 451 can be said to be made out. Offence under Section 451

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of IPC is admittedly bailable offence.

6. Now, the next question falls for consideration is, whether the allegations, as are made in the FIR, would attract any of the offences under the Atrocities Act and more particularly, the offence under Section 3(1)(r) and 3(1)(s) of the said Act. I deem it appropriate to reproduce the aforesaid section, which read thus, -

"3. Punishment for offences of atrocities, -

(1) Whoever, not being a member of a scheduled caste or a scheduled tribe, -

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;"

7. It is not in dispute that whatever utterances are alleged against the present appellant, they are made in the house and as such,

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they cannot be said to have been made in any public premises or public view. Further, the utterances allegedly made by the present appellant as well as his companion do not contain any remark on the caste of the informant or appears to have been made intentionally, insulting or intimidating the informant with intent to humiliate him on his caste. In the circumstances, prima facie, it does not appear that any offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act, was liable to be attracted. This court has also observed in the order passed in Criminal Appeal No. 587/2019 in para 7 that, the offence is not made in public view and it took place inside the house. This court has also observed that the statement in FIR does not disclose that there was specific abuse in the name of caste.

8. The impugned order read in the background of the facts, as aforesaid, appears unsustainable. The learned Sessions Judge has failed in considering the submissions on behalf of the appellant and has wrongly rejected the application filed by him, mainly on the ground that the offence

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under the Atrocities Act are alleged against the appellant.

9. Now, it is brought to my notice that the charge sheet has also been filed. In this context, it was the submission of the learned counsel appearing for Respondent No.3 that appropriate remedy for the appellant would be to file a fresh application in view of the change in circumstances, i.e. filing of the charge sheet.

10. Learned Counsel Shri Sapkal, however, referring to the provisions under Section 14A of the Act, submitted that in any case, the appeal filed by the present appellant will have to be decided on merits by this court.

11. As I have discussed herein above, from the contents of the FIR, the offence under Section 294 of IPC cannot be said to be made out. The offence under Section 451 of IPC, which appears to be made out is a bailable offence and so far as the material, as has been collected by the prosecution, which includes statements of two alleged eye-

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witnesses, which are referred to by the learned counsel Shri Deshmukh as well as Shri Salgare, learned APP, according to me, falls short in attracting section 3(1)(r) and 3(1)(s) of the Atrocities Act.

12. As time and again observed by the Hon'ble Apex court, personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to facts and circumstances of the case. Considering the accusations made against the present appellant in the FIR and the material collected by the prosecution during the course of the investigation, it does not appear to me that bail can be refused to the appellant.

13. For the reasons stated above, the appeal deserves to be allowed in the following terms, -

i. The order dated 30th July, 2019 passed by the Additional Sessions Judge, Newasa in Criminal Misc. Application No. 172/2019, in so far as it relates to the present appellant, stands set aside;

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ii. The Misc. Criminal Application in so far as it relates to the present appellant stands allowed. The appellant be released on his furnishing PR bond in the amount of Rs.30,000/- with one or more sureties in the like amount. .

iii. The appellant shall not, in any way, tamper the prosecution evidence or shall make any attempt to contact any of the prosecution witnesses or else, it would be open for the State or to the complainant to apply for cancellation of the bail.

iv. The appeal stands allowed in the aforesaid terms.

(P.R.BORA)

JUDGE

BDV