

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.94 OF 2019

ALPESH DATTATRAYA DESLE & ANR.)...APPELLANTS

V/s.

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

Mr.Rohan Hogle i/b. Mr.Anshul Sontakke, Advocate for the Appellant.

Ms.P.N.Dabholkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 1st MARCH 2019

ORAL JUDGMENT :

1 By this appeal, the appellants/accused are challenging the order dated 31st December 2018 passed by the learned Special Judge Thane under the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989, thereby rejecting the application under Section 439 of the Code of Criminal Procedure

in Crime No.I-342 of 2018 for the offence punishable under Section 295(A), 427 read with 34 of the Indian Penal Code as well as under Section 3(1)(T) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered with Police Station Padgha at the instance of respondent no.2. Despite service, respondent no.2 is absent and though sufficient chance was given to him to put in his appearance, he has failed to do so.

2 Heard. Admit. Heard finally, considering the fact that the appeal is challenging the order rejecting the application for bail moved by the appellants/accused.

3 The First Information Report (FIR) lodged by respondent no.2 against accused persons is to the effect that banner erected on occasion of Mahaparinirvan Din was torn by somebody. During the course of investigation, appellants/accused came to be arrested and torn portions of the hoardings came to be seized from them.

4 Investigation of the crime in question appears to be virtually over. No further pre-trial detention of appellants/accused, as such, is warranted. The learned Special Judge has not considered whether banner constituted an object held to be sacred or in high esteem by the members of the Scheduled Castes or Scheduled Tribes.

5 In this view of the matter, the impugned order rejecting bail cannot be sustained. Therefore the order :

ORDER

- i) The appeal is allowed.

- ii) The impugned order dated 31st December 2018 passed by the learned Special Judge, Thane, below Exhibit 1 in Criminal Bail Application No.3485 of 2018 is quashed and set aside.

- iii) The application for bail moved by appellants/accused is allowed on the same terms and conditions as imposed vide order dated 5th February 2019 by this court.
- iv) The appeal stands disposed off accordingly.

(A. M. BADAR, J.)