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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPEAL No. 786 OF 2018

Mayur Babasaheb Dhumal ... Appellant
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Prashant Maggu i/b Sujendra Yadav, for the Appellant.
Mr. H. J. Dedhia, APP for Respondent - State.

**CORAM : INDRAJIT MAHANTY, &
A. M. BADAR, JJ.**

DATE : APRIL 2, 2019

ORAL JUDGMENT [PER : A. M. BADAR, J.]

1. Heard the learned counsel appearing for the respective parties. Respondent No. 2, though served, is absent. Admit. The learned APP waives notice for Respondent No. 1. By consent, appeal is taken up for final hearing.

2. By this appeal, filed under S. 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Appellant-accused is challenging the order dated 12th June, 2018 passed below Exhibit 1 in Criminal Anticipatory Bail Application No. 231 of 2018 in Crime No. I-2/2018, registered with Kolsewadi Police Station for the offence punishable under S. 120A,

120B, 143, 147, 148, 149, 153, 153A, 153B, 295, 307, 324, 403, 427, 436, 503, 504, 506, 509, 511 of the Indian Penal Code, and S. 3(1)(t), 3(1)(u), 3(1)(v), 3(2)(3), 3(2)(4), 3(2)(5)(a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short the “Atrocities Act”).

3. Heard the learned counsel for the Appellant and the learned Additional Public Prosecutor for the Respondent-State. According to the prosecution case, FIR came to be lodged by Respondent No. 2 on 3.1.2018. The incident took place on 3.1.2018 when there was a silent march for protesting the incident, allegedly took place at Bhima Koregaon on 1.1.2018. First informant – Shekhar Kedare averred in the FIR that when that protest march was going on, some persons armed with weapons like swords and wooden sticks gathered and assaulted the persons who participated in the silent march. So far as the Appellant-accused is concerned, as per the recitals in the FIR, he was armed with sword and was holding saffron flag. He was a member of the unlawful assembly, and indulged in damaging the “Ashoka” pillar in the locality.

4. We have heard the learned counsel for the Appellant-accused. He drew our attention to the photographs, annexed to the appeal, and argued that on the date of the incident, the Appellant-accused was not present at Kolsewadi, where the incident took place. He had been to the place of his sister at

Kopar-khairane. Upon this, being asked, the learned APP fairly submitted that investigation into this aspect was carried out and it was revealed during the investigation that the Appellant-accused was present in Kopar-khairane on the date and time of the incident. The learned APP tendered the copy of call records of the cell phone of the Appellant-accused, which shows that the Appellant-accused was present at Kopar-khairane area at the time of incident in question. The copy of police report and the call records of cell phone of the Appellant-accused, are taken on record and collectively marked "X" for identification.

5. In view of the further progress in the investigation, it transpired that the Appellant-accused was not present at the time of scene of occurrence. Therefore, we are of the considered view that bar of Section 18 and 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not attracted to the present case. No prima-facie case is made out showing complicity of the Appellant-accused in the alleged act. So far as the offences under the Indian Penal Code are concerned, no custodial interrogation of the accused is required, in view of the fact that investigation transpires that the Appellant-accused was not present at the scene of occurrence. According to the learned APP, there are statements of some witnesses, who have spoken about presence of the Appellant-accused at Kopar-khairane. Similarly, some transaction was carried out by the Appellant-accused from the ATM of the State Bank of India, Kopar-khairane

branch, which shows that the Appellant-accused was not present at the scene of occurrence. In this view of the matter, we are unable to endorse the reasonings of the learned Special / Sessions Judge recorded in the impugned order, rejecting the prayer of anticipatory bail made by the Appellant-accused. In the result, appeal deserves to be allowed. Hence, the following order.

ORDER

- (i) The impugned order dated 12.6.2018 passed by the Special Judge, under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, below Exhibit 1 in Anticipatory Bail Application No. 231 of 2018 is hereby set aside;
- (ii) Anticipatory Bail Application No. 231 of 2018 is hereby allowed. In the event of arrest of the Appellant-accused in the subject crime, he be released on bail on his furnishing P.R. bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (iii) The Appellant-accused shall assist the investigating officer in the investigation;
- (iv) Needless to mention that all these observations are prima-facie and shall have no bearing on the trial.
- (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.

- (v) Appeal is disposed of in the aforesaid terms.

Sd/-
[A. M. BADAR, J.]

Vinayak Halemath

Sd/-
[INDRAJIT MAHANTY, J.]