

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.847 OF 2018

Rahul Shashikant Mahajan ... **Appellant**
V/s.
The State of Maharashtra & Anr. ... **Respondents**

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Mr.Raviraj R. Paramane, Advocate for the Appellant.

Mrs.M.M.Deshmukh, APP for the Respondent/State.

None for the Respondent No.2.

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

DATED : 7th JUNE 2019.

ORAL JUDGMENT :

1 This is an appeal challenging the Order dated 06/06/2018 passed by the learned Special Judge under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity) thereby rejecting the application for anticipatory bail moved by the appellant/accused in Crime No.I-2/2018 registered with Police Station, Kolasewadi, at the instance of respondent No.2/First Informant.

2 This Court vide Order dated 19th July 2018 was

pleased to grant ad-interim anticipatory bail to the appellant/accused and ordered issuance of notice to respondents. Respondent No.2 was served and accordingly Mr.Amit A. Katarnaware, the learned Counsel appeared for the respondent No.2. However, today when the appeal is called out for hearing, none appeared for the respondent No.2.

3 We heard the learned Counsel appearing for the appellant/accused. He drew our attention to the FIR dated 03/01/2018 lodged by the respondent No.2 and submitted that perusal of the FIR does not reflect commission of any offence under the Atrocities Act committed by the appellant/accused and as such, bar of Section 18 of the said Act is not applicable. The role attributed to the appellant/accused is only of raising slogans and hosting saffron flag.

4 The learned Additional Public Prosecutor opposed the appeal by contending that the appellant has committed the offence under the Atrocities Act and as such, he is not entitled for anticipatory bail. He justified the impugned Order rejecting the anticipatory bail.

5 We have considered the submissions so advanced and also perused the material placed on record including the FIR lodged by the respondent No.2. The incident in question is

outcome of communal riot at Bhima-Koregaon. The incident in question allegedly took place in Kalyan Taluka of Thane District. Allegations against the appellant/accused are to the effect that he has hosted the saffron flag and gave slogans 'Jai Bhavani, Jai Mahadev, Jai Shivray' We are of the considered opinion that hosting saffron flag and giving slogans would not amount to any offence punishable under the Atrocities Act and as such, bar of Section 18 or 18A thereof is not applicable to the case in hand. Considering the nature of allegations against the appellant/accused and the fact that he is directed to be released on ad-interim anticipatory bail way back on 19/07/2018, we feel that the liberty of the appellant/accused needs to be protected. The impugned Order rejecting the application for anticipatory bail, as such, is not sustainable. Therefore, the Order :

ORDER

- (i) The Appeal is allowed.
- (ii) The impugned Order dated 06/06/2018 passed by the learned Special Judge is quashed and set aside.
- (iii) The application for anticipatory bail moved by the appellant/accused is allowed by confirming the Order dated 19th July 2018 passed by this Court.
- (iv) In the event of his arrest, the appellant/accused be

released on bail on the same terms and conditions as imposed vide Order dated 19th July 2018 by this Court.

(v) The Appeal stands disposed of accordingly.

(A.M.BADAR, J.)

(INDRAJIT MAHANTY, J.)