

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.695 OF 2017

1. Mehboob Gulab Shaikh,	]	
2. Latif Gulab Shaikh.	]	... Appellants /
		(Orig. Accused)

Versus

1. The State of Maharashtra.	]	
2. Bharat Shankar Gaikwad.	]	... Respondents

Mr. Viresh V. Purwant for Appellant.

Mrs. S. V. Sonawane, APP for State - Respondent No.1.

CORAM :- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.

RESERVED ON :- FEBRUARY 12, 2019

PRONOUNCED ON :- FEBRUARY 18, 2019

P. C. :-

1. This is an Appeal preferred by the Appellants as per the provisions of Section 14A(1) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act'). The Appellants' application for anticipatory bail preferred vide Criminal Misc. Application No.342 of 2017 was rejected by the learned Special Judge, Satara, vide order

dated 29/07/2017. The Appellants have preferred this Appeal challenging that order and consequently for their release on bail in the event of their arrest in connection with C.R.No.84 of 2017 registered at Koregaon Police Station under Sections 3(1)(r) and 3(2)(va) of the Atrocities Act and under Section 7(1)(d) of The Protection of Civil Rights Act, 1955. The Appellant No.1 himself had lodged the FIR against Bharat Gaikwad, his son Rohit and Bharat's wife Usha vide C.R.No.82 of 2017 at the same police station under Sections 307, 323, 504 and 506 read with 34 of the IPC. C.R.No.82 of 2017 was registered at 5.35 p.m. on 18/04/2017 and C.R.No.84 of 2017 against the Appellants was registered at 11.15 p.m. on the same day.

2. The Appellant No.1 had lodged his FIR against Bharat, his son Rohit and Bharat's wife Usha in respect of the incident dated 17/04/2017 which had taken place at around 8.30 p.m. According to the Appellant No.1, there was a dispute in respect of a small open space near the house of the Appellant No.1 and Bharat. Both the parties quarreled many times because of that. On 17/04/2017, Bharat assaulted the Appellant No.1 with an iron rod on his left cheek and Rohit assaulted him with an axe on his stomach, due to which,

the Appellant No.1 suffered serious injuries. The Appellant No.1's FIR was lodged vide C.R.No.82 of 2017.

3. In this backdrop, C.R.No. 84 of 2017 was lodged by Bharat Gaikwad against the present Appellants, which is the subject-matter of the present Appeal. According to the first informant Bharat, on 17/04/2017, at around 7.30 p.m., the Appellant No.1 came near the first informant. The first informant was standing near a place known as Lhasurne Kaman (Arc). According to the first informant, the Appellant No.1 started assaulting him and abusing him with reference to his caste. The first informant's son Rohit came there and both of them proceeded towards their house. It is the further case of the first informant that when his wife was alone in the house, the present Appellants and one Jamir Shaikh assaulted her and abused her with reference to their caste. On these allegations, Bharat Gaikwad lodged his FIR at Koregaon Police Station vide C.R.No.84 of 2017 as mentioned earlier, under Sections 323, 504 and 506 read with 34 of the IPC and under Sections 3(1)(r) and 3(2)(va) of the Atrocities Act and under Section 7(1)(d) of The Protection of Civil Rights Act, 1955.

4. The investigation was carried out and the charge-sheet is already filed. The Appellants preferred their second application for anticipatory bail before the Special Judge, Satara. Before filing of the charge-sheet, their application for anticipatory bail was already rejected by the learned Special Judge. As mentioned earlier, the learned Judge rejected the Appellants' second application for anticipatory bail which was preferred after filing of the charge-sheet.

5. We have heard Mr. Viresh V. Purwant, learned Counsel for the Appellants and Mrs. S. V. Sonawane, learned APP for State. The Respondent No.2, though served, did not enter his appearance. However, the impugned order in Misc. Application No.342 of 2017 passed by the learned Special Judge, Satara, mentions in paragraph 10 thereof that the Advocate for the original Complainant did not have any grievance against the accused and had no objection for releasing the accused on anticipatory bail. However, in view of Section 18 of the Atrocities Act, the learned Judge was of the opinion that the anticipatory bail could not be granted.

6. Mr. Purwant submitted that in the entire charge-sheet, the offences under the Atrocities Act are not made out. The FIR against the present Appellants was a counter-blast to the FIR lodged by the Appellant No.1 against the first informant. The charge-sheet is already filed and there was no necessity for his custodial interrogation.

7. As against this submission, Mrs. Sonawane, learned APP for State, submitted that since the provisions of the Atrocities Act are applied, the relief of anticipatory bail could not be granted, particularly in view of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018.

8. The charge-sheet against the present Appellants is filed under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Atrocities Act. Insofar as the offence under Section 3(2)(va) is concerned, there are no allegations in the entire charge-sheet in respect of any offence concerning property belonging to the first informant. The allegations are specifically in respect of the incidents dated 17/04/2017. Sections 3(1)(r) and 3(1)(s) read as under :

“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;

.....

.....

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

9. The main ingredient in both the sub-sections is that the offence should have taken place 'within public view'. In the instant case, except the first informant, his son Rohit and wife Usha who are alleged victims themselves, the charge-sheet contains statements of only two eye witnesses namely Pravin Bhilare and Gulab Jadhav. Both of them have categorically stated that they had seen the quarrel between Bharat Gaikwad and the present Appellants but they had not heard any abuses relating to caste nor they were aware of such abuses being given by the Appellants. Hence, even at this stage, it cannot be said that the abuses were given or the first informant's family was insulted within public view. Therefore, in our considered view, the

provisions of the Atrocities Act are not attracted. Consequently, the bar for granting anticipatory bail does not operate in the present case before us.

10. It is also significant to note that the first informant had given no objection through his Advocate for grant of relief to the Appellants when the matter was argued before the learned Special Judge at Satara. It also appears that the first informant Bharat Gaikwad had lodged his FIR after the Appellant No.1 had suffered injuries and had lodged his own FIR earlier. Thus, it appears that the FIR lodged by the first informant Bharat Gaikwad is a counter-blast to the FIR lodged by the Appellant No.1.

11. Charge-sheet in the present case is already filed and there is no necessity of custodial interrogation of the present Appellants.

12. Taking into consideration these aspects, we are inclined to grant relief to the present Appellants. Hence, the following order.

ORDER

- (i) In the event of their arrest in connection with C.R.No.84 of 2017 registered at Koregaon Police Station, District Satara, the Appellants are directed to be released on bail on their executing P.R. bond in the sum of Rs.25,000/- each with one or two sureties in the like amount.
- (ii) The Appellants shall attend the trial Court on every date fixed for hearing of the trial.
- (iii) The Appellants shall not try to influence any witnesses in the case in any manner.
- (iv) The Appellants shall report to Koregaon Police Station on first Sunday of every month between 10.00 a.m. to 12.00 p.m.
- (v) With the aforesaid directions, the Appeal is disposed of.

(SARANG V. KOTWAL, J.)**(INDRAJIT MAHANTY, J.)**