

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1316 OF 2018

Deepak Tukaram Sanas **Appellant.**

V/s.

The State of Maharashtra & Anr. **Respondent.**

Mr.Niranjan Mundargi i/b Vaibhav R. Gaikwad for appellant.

Mr.Nikhilesh Pote,appointed Advocate for Respondent no.2.

Mr.AR Kapadnis, APP for State.

Mr.S.K. Khude, Head Constable, Koregaon Police station,
Satara present.

CORAM : A. M. BADAR, J.

DATE : 3rd October, 2019.

ORAL JUDGMENT:

1. Heard. Admit. Heard finally considering the fact that the appeal is challenging order of the Special Judge, Satara, thereby rejecting criminal bail application No.841/2018 filed

by appellant/accused claiming pre-arrest bail in Crime No.262/2018, registered at Koregaon Police Station, at the instance of respondent No.2 Rupesh Sitaram Sapkal for offences punishable under Section 3(1)(r)(s), 3(2)(va) and 6 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as Sections 504 and 506 r/w 34 of the Indian Penal Code.

2. Heard learned counsel appearing for the appellant/accused. He drew my attention to several complaints lodged by respondent no.2/first informant against the appellant/accused and contended that the appellant/accused is Sarpanch of the village and respondent no.2/first informant is sharing hostile relations with him. It is also pointed out that the appellant/accused had lodged complaint dated 10.9.2018 against respondent no.2/first informant to the Collector for taking action in respect of threat of self immolation. With this it is argued that both

the parties are not in good terms. Learned Counsel further argued that perusal of F.I.R. lodged by respondent no.2 goes to show that the incident in question took place not in place within public view, therefore, bar of Section 18 or 18-A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not applicable to the case in hand.

3. Learned APP opposed the appeal by contending that statements of several witnesses are examined by the Investigating Officer and the offence is serious. He argued that there is vertical split in the village due to Grampanchayat elections. Therefore, custodial interrogation of the appellant/accused is warranted.

4. Learned counsel for respondent no.2/first informant argued that offence is very serious and prima facie case for the offence of atrocity is made out. Casteist abuses are given by the appellant/accused 'within public view' and

therefore, prima facie case is made out. He, therefore, submits that the appellant/accused is not entitled for anticipatory bail. He places reliance on the judgment of the Supreme Court in the matter of *Vilas Pandurang Pawar and Anr. Vs. State of Maharashtra & Ors.*¹

5. I have considered the submissions so advanced and also perused the statements of witnesses relied by the learned APP. Offence of atrocity alleged against the appellant/accused is to the effect that on 24.9.2018, at village Aasle in Koregaon Taluka of Satara, the appellant/accused came on the road when members of the prosecuting party were going to the Police Station. There, in presence of persons who attended the election meeting, he threatened them by uttering that they belong to 'Mahar' Caste and they are installing Ganesh idols at the door of person belonging to Mahar Caste and therefore, he will show him.

¹ (2012)8 SCC 795

6. Intentional insult or intimidation with intent to humiliate the member of Scheduled Caste, 'in any place within public view' constitutes offence of atrocity as defined by Section 3(1)(r) of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Similarly, giving casteist abuses to any member of the Scheduled Caste by Caste 'in any place within public view' also constitute an offence of atrocity. The incident in question as alleged in FIR, took place when the persons attending election meeting started proceeding towards the Police Station in the wake of threatening given to them by Rahul and Harish. It is alleged in the FIR that, in front of the house of Tukaram, members of the prosecuting party saw Harish Jarande. While questioning said Harish, it is alleged that the appellant/accused Deepak all of a sudden appeared and intentionally insulted with intent to humiliate member of the Scheduled Caste and gave casteist abuses to those who were proceeding towards Police Station.

7. Offence of atrocity as alleged against the appellant/accused can be made out prima facie provided it is demonstrated that such offence took place ‘in any place within public view’. This expression is clarified by the Division Bench of this Court, in the matter of ***Pradnya Pradeep Kenkare and Ors. vs. State of Maharashtra***².

Paragraph 8 reads thus;

“8.The provisions of Section 3(1)(x) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The expression “in any place within public view” has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression “public view” has been prefixed by the preposition “within” which in fact follows the expression “in any place”. In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being “within public view”. The act of insult or

² 2005(3)Mh.L.J.368

intimidation must be visible and audible to the public in order to constitute such act to be an offence under Section 3(1)(x) of the said Act. In the provision of law comprised under Section 3(1)(x) of the said Act, the word “view” refers to that of ‘public’ but prefixed by the expression “in any place within”. Being so, the word “public” not only relates to the location defined by the word “place” but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under Section 3(1)(x) of the said Act.”

8. It is thus, clear that in order to demonstrate that offence took place ‘in any place within public view’ witnessing such

incident by any independent public witness is necessary.

9. The prosecution has recorded statements of Anil Sanas, Uday Pawar, Laxman Pawar, Ramchandra Maruti Sanas, Laxman Sitaram Sanas, Aparna Sapkal and Jyotsana Chauhan and Dilip Pethekar. These statements are relied by learned APP. Perusal of statements shows that all these witnesses are not at all independent public witnesses. In this view of the matter, bar of Section 18 or 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 is not applicable to the case in hand, as the incident is not witnessed by any independent public person. In the matter of Vilas Pawar, cited supra, the Apex Court has found that offence of atrocity is prima facie disclosed from the complaint. Such is not the case in hand. Therefore, the order.

ORDER

- i) The appeal is allowed.
- ii) Impugned order dated 23.10.2018, passed by the learned

Special Judge, Satara, in Criminal Bail Application No.841/2018 is quashed and set aside.

- iii) Application for anticipatory bail moved by the appellant in Crime No.262/2018, registered by Koregaon Police station, Koregaon, District-Satara is allowed.
- iv) In the event of his arrest, the applicant be released on bail, on executing P.R.Bond of Rs.15,000/- and furnishing surety in the like amount.
- v) As condition of order, the applicant shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against her so as to dissuade him from disclosing such facts to the Court or to any Police Officer.
- vi) The appellant/accused should cooperate the Investigating Officer by attending concerned police station as and when directed by the Investigating Officer.
- vii) The appeal stands disposed of accordingly.

(A. M. BADAR, J.)