

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPEAL No. 1534 OF 2018

Mohan @ Mahadev Ankush Jathar & Ors. ... Appellants
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. Kuldeep U. Nikam, for the Appellants.

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

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

DATE : MARCH 19, 2019

PC :

1. By this appeal, Appellants seeks to challenge the order dated 1.12.2018 passed by the Special / Sessions Judge, Baramati in Criminal Bail Application No. 870 of 2018, filed by the Appellant under S. 438 Cr. P.C. for grant of pre-arrest bail in C. R. No. 671/2018 registered under S. 307, 143, 147, 148, 149, 506, 337, 323 read with 34 of the Indian Penal Code, under S. 3(1)(r)(s), 3(2)(va), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under S. 7(1)(d) of the Protection of Civil Rights Act, at the instance of Respondent No. 2.

2. Heard the learned counsel for the Appellants and the learned Additional Public Prosecutor for the Respondent-State.

The learned counsel for the Appellants argued that the incident happened when the Appellant No. 2 alongwith accused No. 1 were sitting beside the road, three persons came on motor cycle and teased Appellant No. 2, so they had been to the house of the victim of the crime in question to report the incident to his parents. Subsequently, the Appellants and other accused persons are assaulted. The learned counsel for the Appellants submits that no overt act is attributed to the Appellants in the alleged incident. Similarly, caste abuses are not attributed to the Appellants. The learned counsel further argued that in the FIR name of the accused is shown as Mahesh Jathar, whereas Appellant / Accused No. 1 is Mohan @ Mahadev Jathar, and as such it is a case of mistaken identity. Our attention is also drawn to the fact that investigation of the crime is over, and there is no need of custodial interrogation or pre-trial detention of the accused. Injury certificates show that the offence of Section 307 of the Indian Penal Code is not attracted. It is argued that Appellants are entitled to be released on bail in the event of their arrest.

3. The learned Additional Public Prosecutor opposed the prayer of the Appellants by drawing our attention to the statement of eye-witness in order to attribute the role of the Appellants. It is also argued that name of the Appellants are specifically referred in the statement of eye witnesses.

4. We have considered the submissions, so advanced by

the counsel for the parties, and perused the charge-sheet, made available on record. The averments in the FIR, lodged by Akshay Misal, shows that when he was returning to his house on 3.9.2018, Appellants and other two accused formed an unlawful assembly and they had assaulted him by means of sword and stones. It is further averred in the FIR that when brother of the injured attempted to intervene in the matter, he was also assaulted by the accused persons.

5. During the course of investigation, statement of several eye-witness are recorded by the prosecution. Their statements implicate the Appellants / accused persons in the crime. The offences, alleged to have been committed, are under the Atrocities Act. In this view of the matter, bar of Section 18 as well as 18A of the of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 applies with full force in the case in hand, and as such, the impugned order rejecting the prayer of anticipatory bail, passed by the learned Special / Additional Sessions Judge cannot be said to be faulted. In the result, the appeal is dismissed.

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

Sd/-
[INDRAJIT MAHANTY, J.]

Vinayak Halemath