

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.684 OF 2018

Atikkha Rajekha

:: VERSUS ::

The State of Maharashtra, Through P.S.O. Washim (Gramin), Washim and
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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

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Shri Mir Nagman Ali, Counsel for the Appellant.
Shri M.K.Pathan, Additional Public Prosecutor for
Respondent No.1/State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 18, 2019.

1. This is an appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "*the SC ST Act*" for the sake of brevity), the appellant is required to approach to this Court since his application for grant of anticipatory bail was rejected on 24.8.2017 by learned Judge below in Misc. Criminal Application No.274/2017.

2. On 2.11.2018, Notices on the present appeal were issued by this Court (Coram : Z.A.Haq, J.). On the said day, learned Additional Public Prosecutor waived service on behalf of respondent No.1/State. By order dated 2.11.2018, it was directed that Notice to respondent No.2/original complainant should be served through Investigating Officer.

3. Thereafter, the appeal was listed during Diwali

Vacations 2018. This Court (Coram : Manish Pitale, J.), on 16.11.2018 granted anticipatory bail pending the the appeal.

4. Today, when the matter is listed, learned Additional Public Prosecutor Shri M.K.Pathan for respondent No.1/State, on the written instructions from the Sub Divisional Police Officer, Washim, made a statement that respondent No.2 was served with a Notice of this appeal and it was intimated to him about the facts of the present appeal. Though respondent No.2 is duly served, nobody is appearing for him.

5. First Information Report was lodged on 16.5.2017 by respondent No.2 in respect of incident that occurred between 9:45 and 10:00 in the morning on the very same day. However, the First Information Report was lodged at 10:00 in the night.

6. According to the First Information Report, against the father of the appellant, Motisim Rajekha Pathan is prosecuted on a complaint filed by daughter of respondent No.2 for offences under Section 376 of the Indian Penal Code and under relevant provisions of the SC ST Act. The First Information Report states that for settling the said dispute said Motisim Rajekha Pathan and his family members used to exert pressure on him. However, since they noticed that the family of respondent No.2 is not coming under their pressure, on 16.5.2017 Motisim Rajekha Pathan and his family members including present appellant Atikkha Rajekha assembled in front of his house. Motisim Rajekha Pathan assaulted on complainant by fighter. At that

time, all the family members of Motisim Rajekha Pathan used abusive language in the name of caste. These are allegations.

7. It appears from the record that investigation is already complete and chargesheet is already filed vide No.96/2017.

8. This Court (Coram : Z.A.Haq, J.) has already granted anticipatory bail in favour of Motisim Rajekha Pathan.

9. The First Information Report in respect of the accusations for abusing in the name of caste against respondent No.2 are most general in nature. No specific role is attributed against the present appellant.

10. In that view of the matter, I am of the view that this is a fit case wherein this Court should exercise its discretion in favour of the appellant. That leads me to pass following order:

ORDER

(i) The criminal appeal is allowed.

(ii) Order dated 24.8.2017 passed by learned Additional Sessions Judge, Washim in Misc. Criminal Application No.274/2017 is set aside.

(iii) In the event of arrest of appellant-Atikkha Rajekha, in connection with Crime No.156/2017 registered with Police Station Washim (Gramin), Washim for offences under Sections 324 and 336 read with Section 34 of the Indian

Penal Code and under Section 3(1)(r)(s) of the SC ST Act, the appellant be released on bail on he executing a P.R.Bond in the sum of Rs.10,000/- with one solvent surety of the like amount.

(iv) The appellant shall attend the police station as and when his presence is required by the Investigating Officer. However, for that, the Investigating Officer shall issue a clear cut 48 hours written notice to the appellant.

(v) The appellant shall not try to exert any pressure on respondent No.2.

(vi) With this, the criminal appeal is allowed and disposed of accordingly.

JUDGE

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