

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.270 OF 2020

Harshwardhan s/o Raibhan Jadhav
Age: 43 years, Occu.: Ex MLA and Agri.,
R/o. Pishor, Tq. Kannad,
Dist. Aurangabad.

... Appellant

Versus

1. The State of Maharashtra
(At the instance of Kranti Chowk
Police Station, Dist. Aurangabad)

2. Nitin s/o Ratan Dabhade
Age: 30 years, Occu.: Labour,
R/o. Banewadi, Near Dr. Babasaheb
Ambedkar Statue, Aurangabad.

... Respondents

.....
Mr. A. K. Bhosale, Advocate for appellant.
Mr. D. R. Kale, Public Prosecutor for respondent No.1-State.
Mr. A. L. Kanade, Advocate for respondent No.2.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28th August, 2020

JUDGMENT :

. **Admit.**

2. Present appeal has been filed under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter

referred to as the 'Atrocities Act') read with Section 438 of the Code of Criminal Procedure to challenge the order of rejection of Bail Application No.425 of 2020 by learned Special Judge, under SC and ST Act, Aurangabad on 09-03-2020. The appellant is apprehending his arrest in Crime No.62 of 2020 dated 01-03-2020 registered with Kranti Chowk Police Station, Aurangabad for the offences punishable under Sections 504, 506 read with Section 34 of Indian Penal Code and under Sections 3(1)(y), 3(1)(s) of the Atrocities Act.

3. Heard learned Advocate Mr. A. K. Bhosale for the appellant, learned Public Prosecutor Mr. D. R. Kale for respondent No.1-State and learned Advocate Mr. A. L. Kanade for respondent No.2-original informant.

4. It has been vehemently submitted on behalf of the appellant that the appellant is Ex MLA and he has been falsely involved by respondent No.2 for some political reasons. The informant has alleged that he belongs to Scheduled Caste and due to unemployment, he was in search of means of earning. He had installed a road side booth (*Tapri*) at about 10.00 a.m. on 29-02-2020 near Adalat Road Circle. He had put a blue flag on the structure and he had started a Paan Shop with subsidiary items. According to the informant, the appellant went to the *Tapri* at about 6.00 p.m. and contended that the plot behind the *tapri* is owned by him and he took objection as to why the *tapri* has been installed at that place. After witnessing the blue flag, he uttered “अरे महारड्या तु या ठिकाणाहुन तुझी पान टपरी लगेच

काढली नाही तर तुला जिवानिशी ठार मारील”. Thereafter, the appellant had took out the blue flag and threw it on the ground. The informant and his friend Gautam Kedare fled away from the spot because of the fear and then went to police station. It has been further submitted on behalf of the appellant that, in fact, the informant himself has acted high highhandedly. He had erected an illegal structure on the Government land which is, in fact, a national highway. The appellant had informed about the hurdle put by the *tapri* to the traffic police and therefore, with the help of traffic police, the said *tapri* was removed. The locals as well as traffic police were at the spot and had witnessed the entire proceeding. Photographs have been produced to show that police persons were present at the spot. The appellant was not even knowing the informant earlier and therefore, it is hard to believe that the Ex MLA would utter abuses in the name of caste only by seeing blue flag. The FIR is nothing but an outcome of political rivalry. These facts were not considered by the learned Special Judge. When the FIR has been lodged with *mala fide* intention, then there should not be a hurdle of bar under Section 18 of the Atrocities Act. Learned Advocate appearing for the appellant, therefore, prayed for allowing the appeal and release of the appellant on bail.

5. Learned Public Prosecutor as well as learned Advocate appearing for respondent No.2 strongly objected the appeal and submitted that the contents of the FIR would clearly show that after the appellant had seen the blue flag, he

could realize that it belongs to the member of Scheduled Caste and therefore, he uttered the abuses in the name of caste. He has insulted the appellant on public road at about 6.00 p.m. when many persons had gathered at that spot. The police papers, especially the spot panchanama, location of the spot and the statement of witnesses recorded uptill now, would clearly show that the present appellant had hurled abuses in the name of caste.

6. At the outset, from the impugned order, it can be seen that the learned Special Judge, as it appears, had only seen the contents of the FIR and the other documents in the police papers appears to have not been seen by him. When it comes to grant of pre-arrest bail, several facts are required to be considered including the police papers which would be consisting of the investigation done till that date. The citations relied by the present appellant were only referred by the learned Special Judge and they have been brushed aside on the ground that the facts in those cases and the case in hand are different. Once again, this Court is required to observe that the facts are bound to be different in two cases, yet, the legal aspect that is involved and the law explained is required to be considered as per the law of precedent.

7. The informant appears to be the member of Scheduled Caste and according to him he had installed the *tapri* on the very day in the morning at about 10.00 a.m. The police papers are very much silent on the point as to

whether the appellant had taken requisite licence to install the *tapri* from the local authorities i.e. the Municipal Corporation and when it was the business concerning the food items, then it may require other permissions. But, neither in the first information report, nor in the statement of his friend who was the partner in the business i.e. Gautam Kedare or even in the statement of the informant under Section 164 of the Code of Criminal Procedure (which has been recorded after the order was pronounced by the learned Special Judge) it is stated that any such permission from the requisite authorities was obtained by them for opening the *tapri*. Another fact that cannot be forgotten taking into consideration the spot that has been shown in the spot panchanama that it was absolutely in the chock and therefore, the clearance from traffic department would have been necessary. When the informant himself has done some illegal act, then how he can be protected is a question. Though the learned Public Prosecutor has very much insisting that about seven offences have been registered against the appellant and he has been convicted in one of the matters i.e. Sessions Case No.273 of 2011 by the learned Additional Sessions Judge, Aurangabad on 06-01-2017, then according to learned Public Prosecutor, he deserves no sympathy. However, learned Public Prosecutor has not produced on record that whether the offences registered in the year 2004, 2008, 2009 and 2010 are still pending. Mere registration of offence cannot be considered, however, pendency of those cases would have been more important. It is less likely that these old cases would be

still surviving against the present appellant.

8. It is to be noted from the spot panchanama that exactly behind the place where the *tapri* was installed, there is an open plot. The police papers as well as the contention of the appellant is that the said open plot belongs to the appellant. As aforesaid, the informant and his partner appears to have not taken permission from the requisite public authorities, so also it appears that he was blocking the road or frontage of the appellant's plot. According to the appellant, the informant had encroached upon his plot. Even if we do not take that point into consideration, yet, the said spot shown in the spot panchanama appears to be on footpath. Erection of *tapri* on footpath could not have been permitted. The photographs, those have been produced by the appellant, show that when the act of removing the *tapri* was going on, at that time, police persons were present. According to the informant, when utterances were given by the appellant at about 6.00 p.m. and he was threatened, he and his friend fled away from the spot. The FIR says that the appellant had removed the blue flag and threw it, however, the spot panchanama does not say that anything was seized from the spot, that means the said blue flag. On the contrary, the spot shows that nothing incriminating was found on the spot and therefore, nothing has been seized. In this background, the statement of the informant under Section 164 of the Code of Criminal Procedure recorded by learned Judicial Magistrate, First Class, Court No.14, Aurangabad on

11-03-2020 is important. He says that when appellant went to the spot at about 6.00 p.m., he started abusing and told informant that he should remove his *tapri*. Informant replied that he would remove it tomorrow, as he will not get a vehicle to take out his belongings. Thereafter, the appellant hurled abuses in the name of caste and given threat to kill. According to him, appellant was along with five to ten persons and those persons were forcibly removing his *tapri*. At this stage, if we consider the photographs produced by the appellant, then it will show that there were police persons at that time. The informant has further stated that he had put a blue flag on the *tapri*, he removed it and went to police station to give FIR. That means, for the first time on 11-03-2020, the informant says that he had removed the blue flag and not the appellant. On the contrary, the FIR states that it was removed by the appellant and he had thrown it. Even if we try to give meaning to the words those have been used in the statement under Section 164 of the Code of Criminal Procedure by the informant that he had the intention to say that the flag was taken out by the appellant, yet, it is not stated by him that he had thrown it. The intention behind the act is definitely then important. The statement of witness Shailesh Zalte taken under Section 164 of the Code of Criminal Procedure states that the appellant had thrown the flag. Taking into consideration all these acts and allegations, the FIR appears to be filed with some political intention or as the *tapri* was removed on the demand of the appellant, the informant had some grievance against the appellant. The FIR appears to be with some *mala fide*

intention. Under such circumstance, in view of the decision of the Hon'ble Apex Court in the case of *Prathvi Raj Chauhan Vs. Union of India and others [WP (C) No.1015 of 2018]* delivered on 10-02-2020, the appeal deserves to be allowed. The learned Special Judge ought to have considered all the aspects involved and ought not to have only gone on the apparent allegations in the FIR. Hence, the following order :-

ORDER

- I) Appeal stands allowed.
- II) The order passed by the learned Special Judge, under SC and ST Act, Aurangabad in Criminal Bail Application No.425 of 2020 on 09-03-2020 is hereby set aside. The said application stands allowed.
- III) In the event of arrest of appellant viz., Harshwardhan s/o Raibhan Jadhav in connection with Crime No.62 of 2020 dated 01-03-2020 registered with Kranti Chowk Police Station for the offences punishable under Sections 504, 506 read with Section 34 of Indian Penal Code and under Sections 3(1)(y) and 3(1)(s) of the Atrocities Act, he be released on P. R. and S.B. of Rs.15,000/- each.
- IV) The appellant shall not indulge in any criminal activity, nor he should tamper with the evidence of the prosecution in any manner. He

should cooperate with the investigating agency.

V) The appellant should remain present before the Investigating Officer on every Monday between 10.00 a.m. to 12.00 noon till filing of charge sheet.

[SMT. VIBHA KANKANWADI, J.]

SCM