

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

CRIMINAL APPEAL NO. 798/2019

Govindlal S/o Mohanlal Mohta,
Aged about 61 years, Occ. Business,
R/o. Bikaner House, Naik Galli,
Dharaskar Road, Itwari, Nagpur,
Tq. and Dist. Nagpur.

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
through P. S. O., Sibaduldi,
Nagpur City, Nagpur.
2. Aakant S/o. Bhimraj Meshram,
Aged about 38 years, Occ. Plumber,
R/o. Tekdi, Kanhan, Post Gondegaon
Parshioni, Dist. Nagpur.

.... RESPONDENTS

Shri Avinash Gupta, Sr. Advocate assisted by Shri A. Gupta, Advocate for
appellant.

Shri S. D. Shirpurkar, A. P. P. for respondent No. 1/State.

Shri A. M. Sharma, Advocate for respondent No. 2.

CORAM : VINAY JOSHI, J.

DATED : 21.12.2020

JUDGMENT

Heard.

2. **Admit.** Considering the issue involved in the matter and by consent of the learned counsel present for the parties, appeal is taken up for final disposal.

3. Crime No. 727/2019 was registered against appellant at Sitabuld Police Station, Nagpur for the offence punishable under Sections 294, 506 of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act (short 'SC and ST Act'). The appellant has initially approached to the Sessions Court for pre-arrest protection however, he could not succeed. The order of rejection passed by the Additional Sessions Judge, Nagpur is subject matter of challenge in this appeal.

4. The learned counsel for appellant would submit that the present case is out come of false implication at the instance of one construction group who intend that the appellant should vacate the hotel premises. The informant who is plumber has alleged that on the date of occurrence, he was doing work near Darvekar General Store which is to the southern of appellant's hotel. He alleged that the appellant intervened the cleaning work and threatened him by abusing in the name of caste. According to learned counsel for appellant, this is a case of false implication since CCTV footage collected by the Police

nowhere shows the happening of incident.

5. Learned Additional Public Prosecutor as well as counsel for defence resisted the bail by stating that there are consistent statement of witnesses who stated about the occurrence. The learned counsel for appellant has filed additional affidavit by which he has explained the happenings captured in the CCTV footage. As per the description given in additional affidavit, at relevant time, the appellant never went to the Southern side of his hotel where allegedly incident took place. Though the affidavit was filed prior to one year, the State has not countered the same nor offered any explanation.

6. This Court has granted interim protection to the appellant prior to one year which is prevailing till date. During meantime, no grievance is put-forth against appellant about misuse of liberty. The question of applicability of the provisions of SC and ST Act along with happening of incident needs consideration. After lapsed of one year, I feel that unless there are compelling circumstances, the protection cannot be withdrawn. Having regard to the nature of accusation and peculiar facts of this case, protection can be granted with certain directions to facilitate the investigation.

7. In view of above, appeal stands allowed.

8. Impugned order dated 28.11.2019 passed by the Additional Sessions Judge, Nagpur is hereby quashed and set aside.

9. The appellant Govindlal S/o Mohanlal Mohta be released on pre-arrest bail on his furnishing P. R. Bond of Rs. 25,000/- with one or two surety in the like amount.

10. The appellant shall attend concerned Police Station on every Monday between 10.00 a.m. to 12.00 noon till filing of the charge-sheet.

11. The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE

Gohane.