

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.245 OF 2020

1] Shaikh Yaser Ahmed s/o Shaikh
Rafique Ahmed,
Age 34 years, Occu: Business,
R/o Row House No.1-13-83,
Near Noorani Masjid, Kabadipura,
Buddilane, Aurangabad

2] Ahmed Shaker Rafique s/o
Ahmed Rafieque,
Age 38 years, Occu : Business,
R/o as above.

.. Appellants

VERSUS

1] The State of Maharashtra
Through Police Station,
Kadam Jalna, Dist.Jalna.

2] Sanjay s/o Ashok Kamble
Age 23 years, Occu : Education,
R/o Harsh Nagar, Labour Colony,
Aurangabad.

.. Respondents

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Adv.Mr. M.R.Jadhav for appellants
A.P.P. Mr.S.N.Morampalle for respondent no.1.
Adv. D.S.Manorkar for Respondent no.2.

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CORAM : MANGESH S. PATIL
DATE : 27/07/2021

ORAL JUDGMENT :

Heard.

2] Admit. With the consent of both the sides, the matter is heard finally at the stage of admission.

3] This is an appeal under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act for short) as amended in the year 2015, being aggrieved and dissatisfied by rejection of application for anticipatory bail under Section 438 of the Cr.PC. preferred by the appellants in connection with City Chowk Police Station, Aurangabad for the offence punishable under Section 307 read with Section 34 of the I.P.C. and Section 3(1)(r) of the Atrocities Act.

4] The allegations are to the effect that one Malanbai and the main accused Tausif and the present appellants who happen to be his cousins were quarreling on 3/1/2020 at 8 p.m. on account of passage of drain water. The informant happens to be a friend of Malanbai's son Anil who arrived there and tried to pacify the quarrel. Enraged by his such conduct Tausif and the appellants are alleged to have hurled abuses at him on caste lines and Tausif is alleged to have assaulted him with a knife and in the process also caused injury to Malanbai. The matter was reported to police and the offence was registered.

5] I have heard the learned advocate for the appellants, the learned A.P.P. and the learned advocate for the respondent no.2 who is original informant.

6] Suffice for the purpose to observe that the bar under Sections 18 and 18-A of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 would not be attracted as laid down in the case of Prathviraj Chauhan V/s Union of India and others; (2020) 4 S.C.C. 727, if it is *prima facie* established that the offence under the Act cannot be made out.

7] Bearing in mind this principle if one minutely scrutinizes the matter in hand, not only in the F.I.R. but even in the statement of Malanbai vague and omnibus allegations have been levelled regarding hurling of abuses on caste lines. Pertinently it is not clear as to which of the three accused had actually hurled these abuses. On the contrary Anil who is son of Malanbai in his statement under Section 161 of the Cr.P.C. attributes these utterances to the main accused Tausif who is not before us. If this is the state of affairs, hurling of abuses on caste lines is an act which is not attributable to the appellants. Resultantly, the bar contained in Sections 18 and 18(A) of the Atrocities Act cannot be placed into service against them.

8] As far as causing injuries by using a deadly weapon like a knife those are specifically attributed by the informant Malanbai and Anil to the main accused Tausif.

9] Besides, accepting the allegations at their face value, the incident seems to have occurred without any pre-meditation. The appellant Tausif on the one hand and Malanbai on the other had engaged in some verbal altercation. It is only after the informant arrived there abruptly and tried to intervene that the subsequent episode is alleged to have taken place in which hurling of abuses and use of the weapon is alleged to have taken place. Therefore there is a serious doubt as to if there is any prior meeting of the minds.

10] Admittedly main culprit Tausif has already been arrested and released on regular bail.

11] The appellants have been granted ad-interim anticipatory bail by order dated 19/3/2020 and we are close to end of July. There are no allegations about the appellants having committed breach of the terms and conditions subject to which they were granted ad-interim anticipatory bail.

12] Taking into account the aforementioned facts and circumstances, the appeal deserves to be allowed.

13] The Appeal is allowed. The ad-interim anticipatory bail granted by order dated 19/3/2020 stands confirmed with the same terms and conditions with a clarification that the condition regarding attendance shall cease to operate on submission of final report under Section 173 of the Cr.PC.

(MANGESH S. PATIL, J.)

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