

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL APPEAL NO.208 OF 2021

HANUMANT MUKUNDA UDMALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr. Vinod B Jadhav
APP for Respondents: Mr. R.B. Bagul

CORAM : MANGESH S. PATIL, J.

DATE : 13.07.2021.

ORAL JUDGMENT :-

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

2] This is an appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities Act) 1989 (hereinafter referred to as 'the Atrocities Act') being aggrieved and dissatisfied by the order passed by the Special Court, refusing anticipatory bail under Section 438 of Cr.PC. in connection with Crime No. 16 of 2021, for the offence punishable under Sections 37, 452, 324, 323, 143, 147, 148, 149, 504, 506 of IPC and Section 3(1)(r) and 3(1)(s) of the Atrocities Act, registered with Ambejogai Rural Police Station.

3] After having heard both the sides, it transpires that there is a dispute between the appellant No.1 and the informant, who happen to be the step-brothers *inter-se*, on account of property. It is alleged that the applicants alongwith co-accused initially assaulted him on 22 October 2020 but the matter was amicably settled due to intervention of some villagers. It is alleged that again on 16 December 2020 the appellants alongwith other accused formed an unlawful assembly, committed criminal trespass by entering into the shop of the informant, armed with weapons and assaulted him. It is alleged that the other two accused in the process of incident hurled abuses on caste lines. The FIR was lodged on 25.1.2021 and the offence was registered.

4] A careful perusal of the papers of investigation would reveal that the allegations as regard offence punishable under the Atrocities Act are against the other two accused who have been arrested and released on regular bail. Obviously, since the appellants also belong to the same caste, they cannot be charged for the offence punishable under the Atrocities Act. For that matter, even there are no such allegations qua them.

5] Though there are couple of independent eye-witnesses, both of whom have narrated the incident dated 22 October 2020 and 16 December 2020, their version is vague and omnibus. They have named the appellants and the other accused collectively stating that they entered into the shop of the informant and assaulted him. They are equally vague in attributing the appellants with omnibus allegations of carrying sticks, stones and iron rod.

6] Conspicuously, the witnesses do not specifically attribute any

of the appellants with specific assault or injury. For that matter, there is not a single injury certificate in the papers of investigation for whatever reason.

7] Coupled with the above state of affairs, it is important to note that the appellants have been protected by way of ad-interim anticipatory bail by this court vide order dated 27.4.2021 by putting them to certain conditions. There are no allegations about they having committed breach of the conditions. In the circumstances, the appeal deserves to be allowed.

8] The appeal is allowed. The impugned order dated 20.02.2021 passed by the Additional Sessions Judge, Ambajogai is quashed and set aside. The ad-interim anticipatory bail being granted by order dated 27.4.2021 stands confirmed with the same terms and conditions with a modification that the condition as regards attendance would cease on filing of a final report by the I.O.

[MANGESH S. PATIL]
JUDGE.

grt/-