

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

910 CRIMINAL APPEAL NO.256 OF 2021

MAULA RASHID SAYYAD (SHAIKH)
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellant : Mr. Mahesh P. Kale Advocate h/f. Mr. Pramod N
Muley

APP for Respondents: Mrs. Geeta Deshpande
Adv. for respondent No.2 : Mr. Sujit A. Patil.

CORAM : MANGESH S. PATIL, J.

DATE : 13.07.2021.

ORAL JUDGMENT : -

1] Heard. Admit. With the consent of learned advocates for the parties, heard finally at the stage of admission.

2] This is an appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention Atrocities) Act, 1989 (hereinafter referred to as `the Atrocities Act') being aggrieved and dissatisfied by the rejection of the appellant's application under Section 438 of the Cr.PC. seeking bail in the event of his arrest for the offences punishable under Section 324, 143, 147, 148, 149, 504 of the IPC and Section 3(1)(r) and 3(1)(s) of the Atrocities Act, registered with Bembli Police Station, Dist. Osmanabad.

3] The FIR has been lodged by a lady who belongs to a

Scheduled Caste alleging that on 14.03.2021 at about 9.00 p.m. when she was disposing of the garbage across the road in front of her house, the appellant taunted her on caste line by saying that “Women from Maang community are useless”. After going back home, she narrated the incident to her husband Balaji. Thereafter, when she, alongwith her husband Balaji went to the appellant to question him, all the accused assaulted him with iron rods and bricks. It is alleged that the appellant gave a blow of iron rod on the left side of Balaji’s head. The matter was reported to the police and the offence was registered.

3] The learned Advocate for the appellant would submits that, in fact, there is a counter FIR in respect of the self-same incident, wherein, according to the version of the appellant's relation Shiraj, the informant husband and other accused assaulted Siraj, his brother Shabbir and his other family members. The learned Advocate would, therefore, submits that the appellant and the other accused are being falsely implicated by invoking the provisions of the Atrocities Act, for the obvious reason.

4] The learned advocate for the appellant would further submit that there are no allegations about the incident of hurling abuses on caste lines in public view as is required under the provisions of Sections 3(1) (r) and 3(1)(s) of the Atrocities Act. He would therefore submit that in the absence of such allegations, the bar contained under Section 18 and 18A of the Atrocities Act would not be attracted. The learned Advocate for the appellant would, lastly, point out that the appellant has already been protected by an ad-interim anticipatory bail by order dated 27 May 2021 and there are no allegations about he having committed breach of the conditions.

5] The learned APP and the learned Advocate for the respondent No.2/original informant submit that the offence is serious. At this juncture, the very fact that the abuses were hurled by the appellant which were addressed at the informant in a public place is sufficient to attract the provisions of Sections 3(1)(r) and 3(1)(s) of the Atrocities Act. This is what has been precisely observed by the learned Special Judge, while refusing anticipatory bail to the appellant. The fact remains that at this juncture, there are specific allegations against the appellant about insulting the informant on caste lines in a public place. They would submit that the matter is still at the stage of investigation. The investigation Officer deserved to be extended sufficient opportunity to complete the investigation, if necessary, by resorting to custodial interrogation of the appellant, as a specific allegation is attributed to him about having used iron rod in assaulting the informant's husband Balaji. The iron rod will have to be recovered. Even if the offences under the Atrocities Act are ignored, still, it is a matter of forming an unlawful assembly with an object to assault the informant and her husband and the offence punishable under Section 324 of IPC being non-bailable the appeal be dismissed.

6] I have carefully gone through the papers of investigation and the impugned order of the learned Special Judge.

7] Suffice for the purpose to observe at the outset that the FIR is absolutely silent about anybody else, apart from the informant, having heard the appellant hurl abuses at her on caste lines. Going by the specific wording of the provisions of Section 3(1)(r) and 3(1)(s) of the Atrocities Act, occurrence of such insult must take place in a public view.

If one bears in mind the distinction between a public place and public view, the absence of specific allegations about anybody else having heard the abuses would be decisive of the matter.

8] In this regard, it is necessary to note that the incident is stated to have taken place at about 9.00 p.m. Besides the papers of investigation do not show that any person has heard the abuses being hurled at the informant. Consequently, there is a serious doubt as to the operation of the bar contained under Section 18 and 18A of the Atrocities Act.

9] Though the appellant is alleged to have assaulted the informant's husband Balaji with an iron rod, for whatever reason, the papers of investigation do not contain any Injury Certificate. Besides, the appellant has been enjoying ad-interim anticipatory bail since 27 May 2021. There are no allegations about he having committed breach of the terms and conditions subject to which it was granted. In these facts and circumstances, the appeal deserves to be allowed.

10] The appeal is allowed. The impugned order dt. 7.4.2021 passed by the learned Special Judge, Osmanabad is quashed and set aside. The ad-interim anticipatory bail granted to the appellant by order dated 27 May 2021 stands confirmed on the same terms and conditions.

[MANGESH S. PATIL]
JUDGE.

grt/-