

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

CRIMINAL APPEAL NO.282 OF 2021

**SANTOSH YASHWANTA TATHE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Appellant : Mr. Bhosle Abhaysinh K.
APP for Respondents/State: Mrs. G.L. Deshpande
Advocate for respondent No.2 : Mr. K.A. Ingle
...

CORAM : MANGESH S. PATIL, J.

DATE : 13.07.2021

PER COURT :

This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter the Atrocities Act) being aggrieved and dissatisfied by the order dated 27.05.2021 passed by the learned Special Judge in Criminal Bail Application No.851/2021 rejecting appellant's Application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in connection with Crime No.118/2021 registered with Pishor Police Station, Dist. Aurangabad for the offences punishable under Sections 324, 323, 504 of the Indian Penal Code and under Section 3 (1)(r), 3 (1)(s) and 3(2) (va) of the Atrocities Act.

2. The FIR has been lodged by a lady belonging to a scheduled caste. She alleges that there has been a long standing dispute between her

family and that of the appellant on account of common bandh intervening their respective lands. She alleges that on 07.05.2021 dispute had occurred between the two sides which was amicably settled. On 09.05.2021 during evening hours when she was present in the field, having seen the appellant she started questioning him as to why he had damaged the common bandh. She alleges that annoyed by her such query he hurdle abuses on caste line and threatened her of dire consequences and thereafter assaulted her with a stick. In a short while her husband arrived at the scene whereupon the other two accused Ravindra and Rameshwar assaulted him. The couple somehow fled from the spot and reached Pishor Police Station where from they were referred for first aid and thereafter the FIR was lodged and the offence was registered.

3. The learned advocate for the appellant would submit that the bar contained in Section 18 and 18 A of the Atrocities Act is not applicable. All the necessary ingredients for constituting the offences under the Atrocities Act cannot made out even the allegations in the FIR are accepted as it is. There are no allegations about hurling of abuses on caste line having taken place in a public view.

4. He would further submit that in fact the appellant was assaulted by the informant and her family members and a separate crime for the offence punishable under Section 307 etc of the Indian Penal Code has been registered against them. Except the offences under the Atrocities Act the other offences under the Indian Penal Code areailable. Custodial

interrogation of the appellant is not necessary. He is ready to co-operate the Investigating Officer. He has been granted ad-interim anticipatory bail and he has not committed breach of any of the terms and conditions subject to which it was granted.

5. The learned APP and the learned advocate for the respondent No.2 informant submit that the offence is serious. The appellant has been specifically attributed with having hurled abuses on caste line addressed to the informant. At this juncture this much of material is sufficient to *prima facie* show his involvement in commission of the crime. He is also attributed with physical assault. The informant sustained at least three injuries. Custodial interrogation of the appellant is necessary to complete the investigation. There are witnesses to the incident. After registration of the present crime, the son of the appellant has indulged in a similar act regarding which another crime is registered for similar offences against him and few other persons. There is every possibility of appellant misusing the liberty once he is granted protection.

6. I have carefully gone through the papers of the investigation and the impugned order.

7. Suffice for the purpose to observe that bar contained under Section 18 and 18 A of the Atrocities Act would come into play only if *prima facie* an offence punishable under the Atrocities Act can be made out. In other words if it can be demonstrated that the offences under the Atrocities Act cannot be made out the bar would not come into play. Bearing in mind

these principles if one adverts to the allegations in the FIR, the informant attributes the appellant about having said to her “Maharde”. The informant belongs to scheduled caste Mahar but this word is not being attributed with any suffix or prefix so as to constitute abuse, sufficient to result in some kind of insult.

8. Besides, accepting the allegations in the FIR at their face value the informant does not state about anybody else having heard the utterances attributed to the appellant. The papers of investigation also do not show that there was any witness who had heard the utterances hurled at the informant.

9. Going by the FIR, the husband of the informant had arrived at the scene after such initial episode. It is therefore quite apparent that there is a serious doubt as to if the incident can be said to have taken place in a public view which is a vital ingredient for constituting the offences being charged against the appellant. If that be so, bar contained under Section 18 and 18 A of the Atrocities Act would not be attracted.

10. As far as the allegations constituting the offences under the Indian Penal Code are concerned, it is only the offence punishable under Section 324 of the Indian Penal Code which seems to have some seriousness. The Injury Certificate of the informant shows that she had sustained three blunt, simple injuries.

11. Coupled with the aforementioned facts and circumstances, one also needs to bear in mind that even the informant and her family members

are now being charged for a more serious crime punishable under Section 307 of the Indian Penal Code in respect of the incident which is alleged to have taken place around the same time and place.

12. True it is that a subsequent FIR seems to have been registered bearing No.137/2021 wherein the appellant's son and few other persons have been alleged to have committed a similar crime. However, conspicuously the appellant is not an accused in that case. One cannot anticipate that even the appellant would indulged in a similar activity.

13. Conspicuously, the appellant has already been protected by way of ad-interim anticipatory bail. There are no allegations about he having committed breach of the terms and conditions and the protection can be confirmed in the interest of justice.

14. The Appeal is allowed. The impugned order is quashed and set aside, the ad-interim anticipatory bail granted by the order dated 15.06.2021 stands confirmed with the same terms and conditions.

(MANGESH S. PATIL, J.)