

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.299 OF 2021

Shaikh Shahin Shaikh Sardar,
Age : 45 years, Occu. Housewife,
R/o Patra Colony, Waluj,
Tq. Gangapur, District Aurangabad

APPELLANT

VERSUS

1. The State of Maharashtra,
through Police Station, Waluj,
Tq. Gangapur, Dist. Aurangabad
2. Shubham Babasaheb Kharat,
Age : 24 years, Occu. Driver,
R/o Patra Colony, Waluj,
Tq. Gangapur, Dist. Aurangabad

RESPONDENTS

Mr. Kachru A. Ingale, Advocate for the appellant
Mrs. G.L. Deshpande, A.P.P. for the respondent/State
Mr. Satish P. Dhoble, Advocate for respondent No.2

CORAM : MANGESH S. PATIL, J.

DATE : 30.07.2021

ORAL JUDGMENT :

Heard.

2. **Admit.**

3. With the consent of learned Advocates for the parties and

learned A.P.P, heard finally at the stage of admission.

4. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Atrocities Act"), seeking anticipatory bail in connection with Crime No. 237 of 2021, registered with Waluj Police Station, District Aurangabad for the offences punishable under Sections 188, 269, 270, 323, 324, 504, 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) of the Atrocities Act and Section 135 of the Maharashtra Police Act.

5. In nutshell, the allegations, as can be appreciated from the FIR and the police papers, are to the effect that the informant was opposing installation of electric supply DP in front of the Budhavihar. The accused persons, including the appellant were harboring grudge against him because of such opposition for a public cause. They abused his nephew and threatened him to tell his uncle not to oppose installation of the DP. When the informant approached the accused persons for questioning them as to why they had abused his nephew Aditya, all the accused abused and assaulted him. The abuses were on cast-line and thereby they insulted him knowing well that he belongs to Scheduled Caste. They also threatened him to eliminate. When his mother, sister and sister's husband tried to intervene, even they were assaulted. The matter was reported to police and the offence was registered.

6. I have heard the learned Advocate for the appellant, learned A.P.P and learned Advocate for respondent No.2.

7. Though the appellant has not been specifically named in the FIR in the strict sense, her description as mother of Abed can be found in the FIR and therefore, there cannot be any dispute as regards identification.

8. However, even if the allegations in the FIR and the statements of the witnesses, particularly Aditya are perused, no specific and exclusive overtact is attributed to the appellant. Only her presence is being referred alongwith other accused while the incident was happening. Hurling abuses much less on caste-lines is not attributed to her.

9. Since the incident apparently had occurred on the spur of moment, without there being any premeditation in as much as it is only when the informant had approached the accused persons, about which they may not have anticipation, it is certainly doubtful if the offences under the Atrocities Act can be attributed to the appellant.

10. Resultantly, there is every room to believe that case of the appellant is such that the bar under Sections 18 and 18-A of the Atrocities Act would not come into play as is interpreted by the Supreme Court in the case of *Prathviraj Chauhan Vs. Union of India and others; (2020) 4 SCC 727*.

11. Importantly, the appellant is a woman. She has already been

granted ad-interim anticipatory bail by this Court by order dated 24.06.2021. There are no allegations about she having committed breach of the terms and conditions. Consequently, the appeal deserves to be allowed.

12. The appeal is allowed. The impugned order is quashed and set aside. The ad-interim anticipatory bail granted by the order dated 24.06.2021 stands confirmed with the same terms and conditions.

[MANGESH S. PATIL]
JUDGE

npj/CRIAPL299-2021