

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

CRIMINAL APPEAL NO. 573 OF 2020

Shaikh Abdul Rahim S/o. Shaikh Hussain

...Appellant

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Mr. Mohammed Asim Shaikh Saleem, Advocate for the appellant

Mr. S. G. Sangle, APP for respondent No. 1

Mr. V. B. Kulkarni, Advocate for respondent No. 2

.....

CORAM : RAVINDRA V. GHUGE

AND

B. U. DEBADWAR, JJ.

DATE : 08th January, 2021

PER COURT : -

1. We have heard the strenuous submissions of the learned Advocate for respondent No. 2 - original Complainant.

2. The contention of respondent no. 2 is that, the present appellant is a Conspirator and because of his instigation a dastardly attack took place upon the victims as set out in the FIR. The custodial interrogation of the appellant is necessary. A case has been made out against the appellant under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the provisions of the IPC as have been mentioned in the FIR.

3. The learned Prosecutor vehemently opposes the appeal and supports the contention of respondent no. 2.

4. On 26.11.2020, while issuing notice, we have passed the following order.

“1. By this Criminal Appeal, the sole appellant- Shaikh Abdul Rahim s/o Shaikh Hussain, aged 53 years, prays for anticipatory bail in connection with Crime No.435/2020 dated 04.10.2020 registered with the Partur Police Station, District Jalna. He is aggrieved by the impugned order dated 13.10.2020 vide which his application for anticipatory bail has been rejected by the learned Special Court.

2. We have heard the learned advocate for the appellant and the learned Prosecutor on behalf of the State, who vehemently opposes this appeal primarily on the ground that this appeal is not maintainable in view of the provisions of Sections 18 and 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The learned Prosecutor further submits that the appellant has played an active role, which led to the commission of the offence. A dastardly attack was made by a large group of 20 to 22 persons upon the complainant, her children as well as her grandchildren. It is by providence that the victims survived the attack as a police vehicle was passing by. The assailants have attacked the victims and damaged their vehicle by breaking the glasses and windows of the vehicle, have assaulted lady members of the family and have robbed the informant of Rs.65,000/-. Foul and filthy language was used against the victims and specific attributes were made towards their tribe, which falls in the Scheduled Tribes category.

4. We have considered the contents of the F.I.R. and we find that the informant has specifically named four persons viz. Ahmed Chous, Faizal Chous, Abbu Chous and Amer Chous. It is mentioned that about 15 to 16 persons, unknown to the victims, were part of this unlawful gathering, which attacked the victims with rods, hockey sticks, knives and stones. We, however, find that the name of this appellant, with which the informant appears to be acquainted, has not been mentioned in the description of the offence and in the second last sentence, it has merely been said as “बरील लोकांना रहीम चाउस यानेच चितावनी दिली आहे.” Ex-facie, we find that the said sentence does not make it evident that the appellant was part of the unlawful gathering and the informant had seen him instigating the assailants.

5. Issue notice to the respondents returnable on 04.12.2020. The learned APP waives service of notice on behalf of respondent No.1/ State. Since the 1989 Act is invoked, we request the learned Prosecutor to direct the Investigating Officer in view of Section 15-A(3) and (5) to serve a copy of this order on respondent No.2 and apprise her of the pending proceeding and returnable date.

6. Until the next date in this matter, in the event of arrest, the appellant (Shaikh Abdul Rahim s/o Shaikh Hussain) shall be released on bail on furnishing a P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand) with a solvent surety of the like amount.

7. The appellant shall handover self attested photocopies of his Voter Identity Card issued by the Election Commission of India and the Adhar Card.

8. The appellant shall mark his attendance with the Partur Police Station on every Tuesday and Friday between 11:00 AM and 01:00 PM, until further orders. The Station House Officer shall mark his attendance in the station diary and obtain the signature of the appellant.

9. The appellant shall render cooperation in the investigation of the crime and shall present himself before the Sub Divisional Police Officer, Partur, as and when required.

10. The appellant shall refrain from contacting the informant, her family members, victims and all such persons, either directly or indirectly, who are likely to be witnesses in the said offence.”

5. It is thus obvious from the FIR, that barring one sentence which is set out in paragraph 4 of our earlier order, there is no allegation against the present appellant. In the statement of Baburao Annasaheb Kale recorded u/s 161 fo the Cr.P.C. dated 05.10.2020, reflects that the present appellant is a M.S.R.T.C. driver. The victims alleged that he had met them before the incident and he had threatened them that they should withdraw the case filed against his relatives. It is contended that, the victims ignored him and proceeded further when the attack mentioned in the FIR took place.

6. We find that, besides leveling an allegation that the present appellant is the person who has incited the rest of the accused to commit the attack set out in the FIR, there are no other attributes to his conduct. In these circumstances, we find that our *prima facie* view taken on 26.11.2020, is not required to be modified. The custodial interrogation of the present appellant is not necessary in the light of the allegation levelled against him. There is no dispute that he has not participated in the attack and there is no allegation that weapons were found in his custody which were used in the attack. The conditions imposed by us in our earlier order would ensure that the appellant does not flee/abscond and will assist the police authorities in the investigation of the crime.

7. As such, this appeal is allowed. The conditions set out by us in paragraphs 6 to 10 in our order dated 26.11.2020 would continue to apply to the present appellant until the commencement of the trial. Needless to state that any violation of any of the bail conditions would be a ground for cancellation of bail.

[B. U. DEBADWAR]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE