

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

CRIMINAL APPEAL NO.578 OF 2020

**BHIMRAJ NAMDEV CHATTAR
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Appellant : Mr. Temkar Rajendra K.
APP for Respondent/State: Mrs. R.P. Gaur
Advocate for Respondent No.3 : Ms. Shital Waghmare R.
...

CORAM : MANGESH S. PATIL, J.

DATE : 10.02.2021

PER COURT :

This is an Appeal under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter 'the Atrocities Act')

2. By filing application under Section 438 of the Code of Criminal Procedure, the appellant sought bail in the event of his arrest in connection with Crime No.1403/2020 registered for the offence punishable under Sections 504, 506 of the Indian Penal Code and Sections 3 (1)(r) and 3 (1)(s) of the Atrocities Act, on an FIR lodged by the respondent No.2.

3. It is alleged in the FIR that the respondent No.2 is a small time vendor of bakery products who sells the products by going from place to place in his Omni Car. Even his wife assists him in the business. It is alleged that on 04.10.2020 when the couple had taken their vehicle for selling the

bakery products in a market place at Village Nannaj Dumala, the appellant who happens to be the Sarpanch of the Village arrived there, asked them to take away their vehicle and threatened to otherwise damage the products and the vehicle. He also abused them and it is stated that even he uttered by calling them with the name of their caste. The FIR was lodged and the offence was registered.

4. The learned advocate for the appellant would submit that since the appellant is a Sarpanch and the Collector had promulgated a notification under Section 144 of the Code of Criminal Procedure due to lock down, he was merely asking the informant and his wife to go away from the place. Accepting the allegations at their face value, he is stated to have simply uttered the name of the caste of the informant, there was no insult or abuses on caste line. He would further submit that in all probability even the informant and his wife were not knowing the appellant and even he was not knowing them. There is no whisper about he being aware about their caste. He would therefore submit that there is no sufficient material to reveal that any offence under the Atrocities Act was committed and consequently bar under Section 18 of the Act will not be applicable.

5. The learned APP assisted by the learned advocate for the respondent No.3 submits that there is a *prima facie* case. It has been specifically mentioned in the FIR about the applicant having threatened the informant and his wife, abused them and even called them by the name of their caste. The prosecutor would further point out that there are

statements of the nearby shopkeepers about occurrence of the incident. She would therefore submit that since it is a matter of grant of anticipatory bail, in view of the provision of Section 18 of the Act the appellant is not entitled to claim bail.

6. I have carefully gone through the papers. Accepting the allegations at their face value, it does appear that appellant and the informant were not knowing each other. Even in the statement of the informant's wife recorded under Section 161 she has specifically mentioned that the couple was not knowing the appellant. Conversely even there is no whisper either in the FIR or in her statement that the appellant was knowing them and their caste.

7. Besides, the statements of the nearby shopkeepers have been recorded under Section 161 of the Code of Criminal Procedure. Though each of them states about some incident having taken place wherein appellant had asked the informant and his wife to go away and not to sell their products at the place, they conspicuously state about he having not uttered anything on the caste lines.

8. Further, except stating that the appellant had called them with the name of their caste, there are conspicuously no allegations about hurling of any abuses on caste lines.

9. It is under these circumstances, *prima facie* it does not appear that any offence as claimed under the Atrocities Act has taken place consequently the bar under Section 18 of the Act would not come into way.

10. The learned Additional Sessions Judge has overlooked all the aforementioned facts and circumstances while refusing bail.

11. The Appeal is allowed. In the event of arrest of the appellant in connection with Crime No.1403/2020 registered with Sangamner Taluka Police Station, Dist. Ahmednagar for the offence punishable under Sections 3(1)(r), 3(1)(s), 3(2)(va), of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Section 504 and 506 of the Indian Penal Code, he be released on bail on his executing personal recognizance for an amount of Rs.20,000/- and furnishing a solvent surety in the like amount subject to following conditions:

- a) He shall attend the concerned police station as and when called by the Investigating Officer till filing of the charge sheet.
- b) He shall not tamper the evidence or influence the witnesses.

12. Learned advocate Ms. Gaikwad was appointed to represent the respondent No.2 she shall be paid Rs.3000/- through the Legal Services Authority.

13. It is made clear that the observations made herein above are only for deciding this matter.

(MANGESH S. PATIL, J.)