

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

CRIMINAL APPEAL NO. 457 OF 2021

Asirkhae Abrarkhae Pathan

Appellant

Versus

01 The State of Maharashtra

02 Vishal s/o Bhanudas Kamble

Respondents

Mr. S. G. Kawade, advocate for the appellant

Mr. R. D. Sanap, APP for Respondent No.1.

Mr. Yogesh Bolkar, advocate (appointed) for Respondent No.2.

**CORAM : V.K.JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 25th November, 2021.

PC :

1 The appellant is seeking anticipatory bail in the event of his arrest in connection with Crime No.0366 of 2021 registered with Jamkhed police station, District Ahmednagar for the offences punishable under sections 307, 341, 329, 324, 143, 147, 148, 149, 500, 504, 506, 427 of the Indian Penal Code and under Section 3 (2) (va) & 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short hereinafter referred to as 'the Act'). His

application with similar prayer came to be rejected by the learned Additional Sessions Judge, Shrigonda, District Ahmednagar on 30.8.2021. In terms of the provisions of section 14 (A) (2) of the Act, the appellant has preferred this criminal appeal.

2 Learned counsel for the appellant submits that name of the appellant is not mentioned in the FIR. Learned counsel further submits that 11 days after the incident, on the basis of supplementary statement of the informant, names of 26 persons came to be added in connection with the present crime. Learned counsel submits that brother of the informant is serving in the police department, and, consequently, not only names are added but also charge under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is also levelled against the accused persons, including the appellant. Learned counsel submits that on the basis of the complaint lodged by one Najuka Babasaheb Jaybhay, resident of village Vanjarwadi, Tq. Jamkhed, crime No.369 of 2021 for the offence

punishable under sections 454, 380, 394 of IPC came to be registered at police station Jamkhed. The said informant Najuka has alleged in the complaint that theft has been committed in her house and certain golden ornaments and cash amount came to be looted from her house. Learned counsel submits that there are no allegations as against the present appellant.

3 Learned Counsel for the appellant submits that on the date and time of the alleged incident, the appellant was proceeding to other village. He is neither acquainted with the complainant nor with other accused persons. There is no previous enmity between them. There are no antecedents. He would co-operate with the investigating agency for further investigation into the crime, if any. The appellant/accused may be released on anticipatory bail.

4 Learned Counsel for the appellant submits that by order dated 22nd September, 2021, this Court (**Coram: V. K. Jadhav & Shrikant D.Kulkarni, JJ.**) allowed the Criminal Appeals No. 436/2021, 441/2021, 442/2021, 444/2021,

443/2021, 439/2021 & 440/2021, preferred by the co-accused in the said crime and released them on bail by imposing certain conditions. The learned Counsel, thus, submits that the appellant also needs to be released on bail by allowing the appeal. The appellant is ready to abide by the conditions, if imposed by this Court, while releasing him on bail.

4 Mr. Yogesh Bolkar, learned counsel appearing for respondent no.2/informant submits that it was a case of mob-lynching. The informant along with his associates is dealing in the business of purchasing country chicken from the villagers adjacent to the villages in Taluka Ashti. On the day of the incident, the informant along with his three associates had been to village Patoda for purchasing country Chicken. At that time, the incident had taken place, in which the informant and his associates were not only humiliated by referring their caste but they were subjected to ill-treatment and beating. Learned counsel submits that video recording of the said incident was made viral and on the basis of the said

video recording, the informant has given his supplementary statement alleging participation of the appellant in the crime.

5 Learned APP submits that the investigation is still in progress. The appellant is absconding since registration of the crime. In order to find out the truth in the allegations made in the complaint, so also in the supplementary statement, custodial interrogation of the appellant-accused is necessary. Furthermore, the amount allegedly looted in the said assault is yet to be recovered.

6 We have carefully gone through the police papers, particularly, the contents of the complaint. It appears that names of only nine persons have been referred in the complaint and there is no mention of the name of the present appellant. In the supplementary statement recorded 11 days after the incident, names of 26 persons were added in connection with the present crime and also charge under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act came to be added against them.

8 We have carefully gone through the supplementary statement of the informant. We find that name of the appellant is merely mentioned in the supplementary statement with the allegations that in addition to those nine persons named in the FIR, those 26 persons, including the present appellant has played a prominent role in the assault. However, no specific allegations, by referring the individual acts of those 26 persons, have been made.

9 Though, it has been alleged that the appellant has also committed the offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, however, after carefully going through the supplementary statement and the police papers, we do not find anything against him *prima facie* attracting the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It appears that in the said incident, which was the outcome of the suspected dacoity and mob lynching, informant and his associates came to be humiliated in some untoward manner. However, the appellant herein whose antecedents are clear

has been named in connection with the present crime belatedly.

10 In the similar set of facts and circumstances, this Court has allowed Criminal Appeals No.436/2021, 441/2021, 442/2021, 444/2021, 443/2021, 439/2021 and 440/2021 and released the appellants therein/co-accused in the said crime by imposing certain conditions. In the given set of allegations, custodial interrogation of the appellant herein is not required. Thus, by imposing certain conditions, we are inclined to release the appellant on anticipatory bail. Hence, following order.

ORDER

I. Criminal Appeal No.457 of 2021 is hereby allowed.

II. In the event of arrest of the appellant Asirkhae Abrarkhae Pathan, in connection with crime No.0366 of 2021, registered with Jamkhed police station, District Ahmednagar for the offences punishable under sections 307, 341, 329, 324, 143, 147, 148, 149, 500, 504, 506,

427 of the Indian Penal Code and under section 3 (2) (va), 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on bail on furnishing P.B. of Rs.5,000/- (Rs. Five thousand) with one surety of the like amount on the following conditions:

- a) The appellant/accused shall not tamper with the prosecution evidence, in any manner.
- b) The appellant/accused shall attend the concerned police station on every Sunday between 8 am to 11 am till filing of the charge-sheet.
- c) In addition to the above, appellant/accused shall also make himself available as and when required by the investigating officer for carrying out further investigation into the crime, if any.

11 We quantify legal fees and expenses of the Counsel appointed for Respondent No.2 at Rs.2000/- (Rs. Two thousand) to be paid by the High Court Legal Services Sub-Committee at Aurangabad. Mr. Yogesh Bolkar, learned Counsel (appointed) for Respondent No.2 fairly

states that the said amount may be directed to be paid to the Library of Advocates' Association of Bombay High Court, Bench at Aurangabad.

In view of the statement made above by the learned Counsel (appointed) for Respondent No.2, the amount of Rs.2000/- may be transferred to the Library of Advocates' Association of Bombay High Court, Bench at Aurangabad.

12 Criminal Appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

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