

Tandale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.24 OF 2021

Razak Hussain Sab Javali and Ors. Appellants.

Vs.

The State of Maharashtra and Anr. Respondents.

Mr. Ritesh M. Thobade a/w Mr. Sagar Tambe for the Appellants.

Mr. A. R. Patil, APP for the Respondent No.1-State.

Mr. Santosh B. Gaikwad, Dy.S.P - Investigating Officer is present.

CORAM : A. S. GADKARI, J.

DATE : 24th FEBRUARY, 2021.

PC.:-

This is an Appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment Act 2015) (for short, "SCST Act") for pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 in C.R. No. 370 of 2020 dated 26th October 2020 registered with Akkalkot North Police Station, Solapur Rural, under Sections 143, 147, 149, 294, 324, 504, 506 of the Indian Penal Code and Sections 7(1)(d) of the Protection of Civil Rights Act 1955, and under Section 3(1)(g), 3(1)(r), 3(1)(s), 3(2)(va) of SCST Act.

2. Heard Mr. Thobade, learned Advocate for the appellants and Mr. Patil, learned A.P.P. for respondent No.1-State. Perused record of investigation.

3. The First Information Report is lodged by respondent No.2. The prosecution case in brief is that, the respondent No.2 and the appellant are neighbors. There used to bickering amongst them, as the appellants were desirous of evicting respondent No.2 from the said premises. Appellants were well aware of the fact that, respondent No.2 belongs to Hindu "Mang" caste. The crime in question has taken place on 26th October 2020, firstly at about 10.30 a.m. and secondly, at about 11.30 a.m. In the first incident, appellant No.2 abused respondent No.2 in filthy language on her caste. The respondent No.2, thereafter gave a phone call to her mother and called her for help. At 11.30 a.m. when the mother of the respondent No.2 came at the scene of offence, she locked their gate from inside. It is alleged that, at that time, the appellants came at the scene of offence, hurled abuses on the caste of respondent No.2 in filthy language and also assaulted mother of respondent No.2 and her daughters with stones. The appellants also caused damage to the Activa Scooter of the respondent No.2. It is further alleged that, while leaving the scene of offence, appellants also threatened respondent No.2 with dire consequences. In this brief premise, the First Information Report is lodged.

4. Mr. Thobade, learned counsel for the appellants submitted that, the alleged abuses hurled by the appellant No.2 at about 10.30 a.m. were not within the public view or at public place. He submitted that, no prima facie case, at all is made out by the prosecution so as to preclude the

appellants from getting benefit of Section 438 of Cr.P.C. He submitted that, apart from the provisions of SCST Act, rest of the offences alleged against the appellants under Indian Penal Code are bailable. He therefore prayed that, the appellants may be protected by pre-arrest bail.

5. Perusal of First Information Report would clearly indicate that, the second incident, which took place at about 11.30 a.m. has occurred outside the house of respondent No.2. The appellants had been to the gate of the house of respondent No.2 and thereafter, they initially abused respondent No.2 in filthy language on her caste and assaulted respondent No.2 and her daughters. This incident of 11.30 a.m. has been witnessed by two daughters of respondent No.2 and her mother, namely, Smt. Parvati S. Javeer. The said incident has taken place at a common place, which is within the public view. The allegations of sustaining injuries in the said assault by the daughters of respondent No.2, namely, Ms. Supriya and Ms. Snehal are duly corroborated by the Medical Certificates issued by Medical Officer, Rural Hospital, Akkalkot. The record of investigation also indicates that, the mother of respondent No.2, namely, Smt. Parvati S. Javeer has also received injury on her chest and abdomen.

6. In view thereof, it can not be said that, no prima facie case at all is made out by the respondent No.2 against the appellants. As a matter of fact a strong prima facie case is made out against the appellants under the provisions of SCST Act.

7. In view of the above and after taking into consideration the serious allegations against the appellants, this Court is of the opinion that, the appellants can not be protected by pre-arrest bail.

Appeal is accordingly dismissed.

(A.S. GADKARI, J.)