

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 946/2021

ASLAM SARDAR MALIK
SHAIKH

} APPELLANT

V/S.

1. THE STATE OF MAHARASHTRA
AND ANR.

} RESPONDENTS

* * * *

Mr. Ritesh Thobde, Advocate for the appellant.

Smt. S.V. Sonawane, APP for State-respondent no.1.

Mr. Vaibhav V. Ugle, a/w. Mr. Vikas Somawanshi and Mr.
Roshan Chavan, Advocate appointed for respondent no.2.

Investigating Officer, Police Constable No.2137, Mr. Irfan
Shaikh present.

Coram : Sandeep K. Shinde, J.

Friday, 17th December, 2021.

P.C. :

1. Heard Mr. Thobde, learned Counsel for the
appellant, Smt. Sonawane, learned APP for State and Mr.
Ugle, Advocate (appointed) for the complainant.

2. On the complaint filed by the respondent no.2, Crime No.465/2021 has been registered against the applicant and unknown persons under Sections 143, 147, 148, 149, 352, 323, 504 of the Indian Penal Code and Sections 3(1)(r)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act" for short).

3. Applicant is Revenue Officer, "Talathi". At the material time, when the offence was registered, he was posted at Kolhapur. Soon after the registration of crime, he came to be arrested on 13th October, 2021. The chargesheet in the crime has been filed.

4. Mr. Thobde, learned Counsel for the appellant, on instructions, submitted that in the chargesheet, appellant's brother-Shaikh Yusuf Sardar, has been cited as accused no.2. In fact, appellant's brother died on 23rd June, 2019. Mr. Thobde, has placed on record, Death Certificate of his brother. It is taken on record and marked "X" for identification. This fact, clearly shows, the casual approach of the Investigating Officer. It also amounts to abuse of process of law at the hands of, the Deputy Superintendent

of Police, Mr. Hire, Investigating Officer. This fact simply cannot be overlooked and therefore I deem it appropriate to request Superintendent of Police, Solapur (Rural) to enquire into gross irregularity, committed by the Investigating Officer; in accordance with law.

5. Here, in this case, appellant and the complainant, are neighbours. Dispute arose between them on account of construction being raised by them. It appears, the complainant constructed a wall, to which the appellant had objected to. It was the cause which led to complaint/FIR. Since, the dispute is regarding the construction of a wall, it would not disclose an offence under the Atrocities Act, unless shown that, victim was abused, intimidated, harassed only for the reason that, he/she belongs to Scheduled Caste or Scheduled Tribe. Mr. Thobde, has rightly placed reliance on the judgment of the Apex Court in the case of **Hitesh Verma V/s. State of Uttarakhand, 2020 (10) SCC 710**. In the cited case, there was dispute about the possession of the land and it was pending before the Civil Court. In consideration of these facts, the Hon'ble Apex Court has observed in para-16 as under :

“There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per Respondent 2 herself. Due to dispute, the appellant and others were not permitting Respondent 2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the civil court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to a Schedule Caste or Scheduled Tribe.”

6. The ratio laid down in the cited case, squarely applies to the facts of the case in hand.

7. Thus, for the reasons stated above and in view of the fact that, investigation is over, the appellant is directed to be released on bail on executing P.R. Bond in the sum of Rs.20,000/- (Rs. Twenty Thousand only) with one or more sureties in the like sum.

8. The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

9. The Superintendent of Police, Solapur shall take a note of gross irregularity, much less, illegality committed by the Officer, investigating Crime No.465/2021 registered with Barshi City Police Station, Barshi and take appropriate action in accordance with law.

10. Registry to forward copy of this order to Superintendent of Police, Solapur.

11. Appeal is allowed and disposed of.

12. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)