

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 139 OF 2021**

Moulali Gafur Faras

....Appellant.

Vs.

The State Of Maharashtra & Anr.

....Respondents.

Mr. Ritesh Thobde for the Appellant.

Mr. Amit Palkar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 25th FEBRUARY, 2021.****P.C.:-**

By the present Appeal under Section 14A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short, '*the S.C.S.T. Act*') the Appellant is seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure (for short, '*the Cr. P.C.*') in C.R. No. 0521 of 2020 dated 8th December, 2020 registered with Akkalkot South Police Station, District Solapur, under Sections 452, 323, 504, 506 read with Section 34 of the Indian Penal Code (for short, '*the IPC*') and under Sections 3(1)(r), 3(1)(s), 3(2), 3(2)(va) of S.C.S.T. Act.

2 Heard Mr. Thobde, learned counsel appearing for the Appellant at length and the learned APP. Perused documents annexed to the Appeal.

3 The first information report is lodged by Respondent No.2 on 8th December, 2020. In the first information report, the Respondent No.2

has categorically stated that, he belongs to Hindu Mahar caste. That, his father was working on a stone crushing machine at Sangli. That, on 8th December, 2020 at about 2.30 p.m., he was taking rest at his house. At that time, the Appellant and his friend namely '*Khaja*' came in front of his house and requested his sister by name Ms. Shashikala Harijan to call Respondent No.2 out. It took some time for the sister of the Respondent No.2 to awaken him. Getting enraged by the same, the Appellant and his friend committed trespass in their house and told him that, they wanted drinking water, however, the Respondent No.2 did not adhere to their call immediately. The Appellant also abused Respondent No.2 in filthy language on his caste. Hearing the said commotion, the grand-mother of Respondent No.2 Smt. Ratnabai Harijan came inside the house. At that time, the Appellant and his friend also heckled her and again abused Respondent No.2 and his grand-mother in filthy language on their caste. It is alleged that, the Appellant thereafter, dragged the Respondent No.2 in front of the shop of one Mr. Anand Shinde and there also assaulted him and abused him in filthy language on his caste. The said incident has been witnessed by three persons. Thereafter, at about 3.15 p.m. again, the Appellant came in front of the house of Respondent No.2 and took him on a road leading to Kabban-Karajagi village. It is alleged that, at that place also, the Appellant assaulted the Respondent No.2. The persons gathered there tried to explain the Appellant, when again the Appellant hurled abuses on the caste of the

Respondent No.2 and threatened him of dire consequences. The Respondent No.2 thereafter, went to the police station, took necessary note there-from and thereafter, went to the dispensary for taking medical treatment. He thereafter lodged the present crime.

4 Mr. Thobde, learned counsel for the Appellant submitted that, the Respondent No.2 in his Complaint has not stated that, the Appellant does not belong to a particular caste i.e. Scheduled Caste or Scheduled Tribe and therefore, the Complaint is vitiated in the eyes of law. In support of his contention, he relied on a decision of this Court in the case of *Sheikh Shama Sheikh Iqbal & Anr. Vs. The State of Maharashtra & Anr.* Reported in 2019 ALL MR (Cri.) 4601, and in particular para No. 8 therein. He therefore submitted that, for want of specific mention about the caste of accused, no *prima facie* case can be said to have been made out and therefore, the accused is entitled for pre-arrest bail.

5 A minute perusal of paragraph No.8 of the decision in *Sheikh Shama Sheikh Iqbal & Anr. (Supra)*, would reveal that in the said case, the observations were made in the facts and circumstances of that case and the Court has observed that, “*There is neither any assertion made on the part of the complainant that she belongs to a scheduled tribe nor does she state in categorical terms that the accused persons belong to some different community not falling within the category of scheduled caste or scheduled tribe.*”

6 In view thereof, this Court at least on two occasions, asked Mr. Thobde, about the caste of the Appellant to which, on some or the other pretext, he dodged. A safe inference therefore has to be drawn that, the Appellant is not a member of Scheduled Caste or Scheduled Tribe.

A minute perusal of the first information report of the present case clearly reveals that, the Appellant abused the Respondent No.2 on his caste at least on three occasions by saying “*Tumhala Maharanche Lokanna Lai Maj Lai Charbi Aali Ahe, Utravi Lagel*” and “*Maharanche Nich Jatiche Lok Ammachi Barobari Karta*”. It is thus clear that, the Appellant was well aware of the fact that, the Respondent No.2 belongs to Scheduled Caste i.e. Hindu Mahar and therefore, he hurled abuses on his caste in filthy language. As noted earlier, the incident of abuses on caste by Appellant has been witnessed by three independent persons.

7 In view of the above, a strong *prima facie* case against the Appellant is made out. There are no merits in the Appeal, Appeal is accordingly dismissed.

(A.S. GADKARI, J.)