

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 209 OF 2021

Mohan @ Mahadev Ankush Jathar

... Appellant

V/s.

The State of Maharashtra and Anr.

... Respondents

Mr. Satyam Nimbalkar for the Appellant

Mr. J.P. Yagnik, APP for the Respondent - State

Mr. Sushil D. Shinde for the Respondent No.2

***CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.***

DATE : 16 DECEMBER 2021

P.C. :-

This is an Appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 wherein the Appellant is seeking to be released on pre-arrest bail and challenging the order passed by the learned Sessions Judge, Baramati dated 5 June 2020 rejecting the Application No. 496 of 2020 for a pre arrest bail filed by the Appellant.

2. The Appellant is Accused No.4 in the C.R.No. 671 of 2018 registered at Indapur Police Station under Section 307, 143, 147, 148, 149, 504,506, 337 of the Indian Penal Code and under Section 3(1)(4)(s), 3(2)(va), 3(2)(v) of Prevention of Atrocities (SC and ST) Act and 7(1)(d) of Protection of Civil Rights Act. The case of the prosecution is that on 3 September 2018 the informant – Respondent No.2 was walking on the road when he heard the noise of a motorcycle behind him and he saw the accused chasing him. It is alleged that Accused - Akshay Jathar raised a sword to attack the informant and the informant blocked the blow by his left hand and he was injured. Accused - Manoj Dhaware and Shashi Misal stopped the informant and Manoj Dhaware threw stones. Informant's cousin brother - Navnath Misal was also attacked with a sword on his hands and legs. Thereafter, the people and the relatives gathered and the assailants ran away. It is stated that the assailant knew that the informant belonged to the Scheduled Caste.

3. The learned Counsel for the Appellant submitted that there is no specific role attributed to the Appellant at all. It is Accused - Akshay Jathar who is stated to have assaulted with a sword. The learned Counsel for the Appellant submitted that the injury certificate of the Medical Officer would show that the injuries are simple. He also submitted that as regard Accused - Akshay Jathar who is stated to have played most serious role, the Division Bench of this Court in the case of *Akshay Ankush Jathar v/s. State of*

*Maharashtra*¹ has granted him regular bail. The learned Counsel for the Respondent No.2 submitted that there is a bar under the Act of 1989 as regard pre-arrest bail. He submitted that the Respondent No.2 had to take treatment in the hospital and that there was a common intention and utterances with reference to caste and therefore, the pre-arrest bail should not be granted.

4. In the order passed by the Division Bench in the case of Accused - Akshay Jathar, the Division Bench has observed on the merits of the prosecution case. The observations therein will not be irrelevant even though that was an application for regular bail. The role of the present Appellant in the FIR is only that his name appears. The injuries which are stated to be inflicted by sword by the main assailant but in the medical certificate they are shown to be simple injuries. As regard the utterances with reference to caste are concerned, there is no specific utterance attributed to the Appellant. What is stated in the FIR is a general statement and as observed by the Division Bench in the case of Akshay Jathar, such utterances cannot be considered as detrimental. Therefore, the position is that the Appellant is neither the main assailant, he is only named in the FIR and no specific utterance are attributed to him, the injuries are simple injuries and therefore, it cannot be said that the Appeal of the Appellant for grant of pre-arrest bail would be barred under the Act as prima facie, the provisions of the Act are not attracted. Therefore,

1 Cri.Appeal No.1409/19 dtd. 3/12/2019

considering the totality of the circumstances as narrated above, we are of the opinion that the Appellant has made out the case for grant of pre-arrest bail.

5. Accordingly, it is directed that in case of his arrest, the Appellant shall be released on bail upon furnishing PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the Investigating Officer. The Appellant will not influence or tamper with the prosecution witness and till the decision of the trial, he will attend the Court where the prosecution is pending once in the first week of every English calender month.

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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