

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

CRIMINAL APPEAL NO.382 OF 2021

Afzal Haji Khan	...Appellant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Shantanu R. Phanse i/b Ms. Riddhi Joshi for the Appellant

Mr. S. S. Hulke, A.P.P for the Respondent No.1–State

Ms. Meghna A. Gowalani for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
MONDAY, 26th JULY 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this appeal preferred under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (`SC ST Act'), the appellant seeks pre-arrest bail in connection with C.R. No. 34 of 2021 registered with the Byculla Police Station, Mumbai, for the alleged offences punishable under Sections 323, 504 and 506 of the Indian Penal

Code and Section 3(1)(x) of the SC ST Act. It appears that subsequently Sections 3 (1) (r) and (s) were applied.

3 Learned counsel for the appellant states that the allegations as against the appellant are false and baseless. He submits that the incident is alleged to have taken place in January 2017, whereas, the FIR is lodged on 2nd February 2021, after about more than 3½ years. Learned counsel for the appellant submits that in an earlier complaint dated 31st December 2020 filed by the respondent No. 2 with the Police Commissioner, there is no mention of the incident of January 2017. He submits that, pursuant to the said complaint dated 31st December 2020, the respondent No. 2's statement was recorded by the police on 9th January 2021 and that the version given in the said incident is different from what is mentioned in the present FIR/complaint. He submits that even taking the prosecution case as it stands, the act will not be covered under Section 3(1)(x) of the SC ST Act. He submits that none of the subsequently added provisions of the SC ST Act would also apply, since the alleged incident has not taken place in public view.

4 Learned A.P.P opposes the application. He, however, does not

deny the fact that the provisions of Section 3(1)(x) will not apply in the facts. He does not dispute that the alleged incident of casteist abuse is stated to have taken place in the vehicle.

5 Learned counsel for the respondent No. 2 opposes the application. She submits that several incidents had taken place from January 2017 to 28th January 2020, in which the appellant abused the respondent No. 2 i.e. gave casteist abuse.

6 Perused the papers. It appears that the respondent No. 2 was known to the appellant for several years and that the appellant had engaged the respondent No. 2 as a driver on his vehicle. It appears that initially the respondent No. 2 was being paid a salary of Rs. 25,000/-, however, subsequently, the appellant was not paying the salary on time. The alleged incident is stated to have taken place in January 2017. According to the respondent No. 2 as he reached late, the appellant abused him and allegedly gave caste related abuses. The said incident is not stated to have taken place in the presence of any person. It appears that the said incident allegedly took place in the car. The respondent No. 2 has alleged that even thereafter, the petitioner would abuse him. At the end of the complaint, he has stated that from January 2017 to 28th January 2020, the appellant had

abused him on several occasions. In the complaint/FIR, the respondent No.2 has alleged casteist abuse by the appellant only in January 2017 as stated aforesaid and there is an omnibus statement at the end that from 2017 to 28th January 2020, the appellant would abuse him.

7 *Prima facie*, taking the prosecution case as it stands, no offence under Section 3(1)(x) of the SC ST Act would apply, having regard to the fact that the said incident is not alleged to have taken place in public view.

8 Considering the aforesaid, the appellant has made out a case for grant of pre-arrest bail. Accordingly, the appeal is allowed on the following terms and conditions :

ORDER

(i) In the event of the arrest, the appellant be enlarged on bail on executing P.R. Bond in the sum of Rs.15,000/- with one or two local sureties in the like amount ;

(ii) The appellant shall report to the Investigating Officer of the concerned Police Station as and when called;

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

(iv) The appellant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The appellant to cooperate with the investigating agency;

9 The appeal is disposed of in the aforesaid terms.

10 It is made clear that the observations made herein are *prima facie*, for the purpose of deciding this application.

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.