

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.453 OF 2021

Ashok Talwatkar ...Appellant
vs.
The State of Maharashtra and Another ...Respondents

Mr. A.P. Mundargi, Senior Counsel i/b. Ms. Manisha Devkar, for the Appellant.

Mr. S.C. Daswadikar, for Respondent No. 2.

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

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CORAM : **S.S. SHINDE &
N.J. JAMADAR, JJ.**

JUDGMENT RESERVED ON : 23rd AUGUST, 2021
JUDGMENT PRONOUNCED ON: 3rd SEPTEMBER, 2021

JUDGMENT : (Per N.J.Jamadar, J.)

1. This appeal under section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC and ST Act, 1989'), is directed against the order dated 26th February, 2020 passed by the Additional Sessions Judge, Mangaon, Raigad in Criminal Misc. Application No. 15 of 2020 whereby the application for pre arrest bail, came to be rejected.

2. Admit. With the consent of the counsel for the parties, heard finally.

3. Shorn of unnecessary details, the background facts leading to

this appeal can be summarized as under:

a] People's Education Society, a public charitable trust, runs various institutions, including Dr. Babasaheb Ambedkar College, Mahad. Mr. Suresh Athavale (hereinafter referred to as 'the first informant'), claimed to have been appointed as the principal of said college, and worked in the said capacity during the period 2013 to 2015. In the wake of dispute over the management of the affairs of People's Education Society, Mr. Dhanaji Gurav, allegedly usurped the said position forcibly. Eventually, by an order dated 14.08.2019, the Charity Commissioner decided that Mr. Ashok Talwatkar, the appellant, who claimed to be a trustee, had no concern with the trust. The said decision was upheld by the High Court by an order dated 21.11.2019.

b] The first informant alleges that Shri. S.P. Gaikwad, Chairman of the society appointed him as the principal of said college. Pursuant thereto the first informant took charge on 23.12.2019.

c] On 26.12.2019, at about 7.00 am while he was discussing administrative matters with Smt. Aruna Ajgaonkar and Smt. Chitra Sallvi, employees of the college, in his chamber, he noticed that 30 to 35 persons rushed into college premises amidst shouting slogans "*Dhanajii Gurav Jindabad*". The mob comprised of Dhanaji Gurav, appellant Ashok Talwatkar, Chinmay Gurav, Rakesh Sonar, Ganesh Mahadik, Sachin Patre, Ramesh Patil, Anil Jadhav, Rohidas

Kashinath Chavan and others.

e] The first informant claimed to have instructed the college staff to lock the grill door leading to the principal's office. The members of the said assembly were armed with deadly weapons. They assaulted Arvind Salvi, Vitthal Gaikwad and Sanjay Hate, who were resisting their march towards principal's office. The grill door was broken open. Thereafter, according to the first informant, Dhanaji Gurav, Gnaesh Mahadik, Sachin Parte, Ramesh Patil and Anil Jadhav and 5 to 7 other bouncers entered into the chamber. Ganesh Mahadik and Ramesh Patil exhorted the persons to unleash the assault upon the first informant. The accused Dhanaji Gurav attempted a blow by means of iron rod on the head of the first informant. He took defensive action and suffered the blow on his right hand, which was fractured. Rest of the persons also assaulted him. He was dragged out of his office. Smt. Aruna Ajgaonkar and Smt. Chitra Salvi were also dragged out of his office. While fleeing away the members of the accused party took away the DVR machine which was installed to record the CCTV footage. The first informant thus lodged the report.

4. Pursuant to the aforesaid FIR, crime was registered at C.R. No. 146 of 2019 for the aforesaid offences. Investigation commenced. Few of the accused came to be arrested. It transpired that the

appellant and co-accused had committed alleged offences in pursuance of the conspiracy hatched at Saitej Hotel. The prosecution further alleged that the members of the unlawful assembly comprised of bouncers, who were brought to the college by co-accused Chinmay Gurav. The appellant had allegedly arranged the vehicles to carry those persons.

5. In the light of aforesaid indictment, the appellant and co-accused Ganesh Mahadik, preferred an application for pre-arrest bail being Criminal M.A. No. 15/2020.

6. In the backdrop of the aforesaid indictment, the appellant preferred an application for anticipatory bail. The appellant claimed to be a member of the governing body of 'People's Education Society'. There is a dispute over the management of the affairs of the said trust. Therefore, the appellant has been implicated to wreak vengeance at the instance of the group led by Mr. S.P. Gaikwad. The first informant, was never appointed as the Principal of the college. Thus, there was no occasion for the first informant to take charge of the said post. The appellant further asserted that even if the case of the prosecution is taken at its face value, no prima facie offence can be said to have been made out against the appellant. The investigation is complete for all intent and purpose. The custodial

interrogation of the appellant is not at all warranted. Hence, the appellant deserves to be released on pre-arrest bail.

7. The learned Special Judge was not persuaded to accede to the submissions of the appellant. Though the learned Special Judge found that no offence punishable under the provisions of SC & ST Act, 1989 could have been alleged against the appellant as he himself was a member of the Scheduled Caste, yet, in the backdrop of the material on record, which established the presence of the appellant at the place of occurrence and the necessity of custodial interrogation to recover the DVR machine, which was allegedly taken away by the assailants after the assault, the learned Special Judge declined to exercise the discretion in favour of the appellant. Being aggrieved, the appellant has preferred this appeal.

8. An affidavit in reply is filed by the first informant Suresh Athavale. The substance of the resistance put forward by the first informant is that the claim of the appellant that he was an office bearer of the trust is not sustainable. There is ample material in the form of the statements of the first informant and other eye witnesses to show that the appellant was very much present at the time and place of the occurrence and instigated the bouncers to mount assault on the informant and the injured witnesses. The appellant had

allegedly arranged vehicles to bring the bouncers to the place of occurrence. As the serious offences were committed in pursuance of the conspiracy, of which the appellant was a prime confederate, the appellant does not deserve the relief of pre-arrest bail.

9. We have heard Mr. Mundargi, learned senior counsel for the appellant, Mr. Yagnik, learned APP for the State and Mr. Daswadikar, learned counsel for respondent No. 2.

10. With the assistance of the learned counsel, we have perused the material on record including the documents tendered by respondent No. 2.

11. Mr. Mundargi, learned senior counsel submitted that the sole material against the appellant is that he was allegedly a part of the mob which barged into the campus of the college. The only source of this material is the singular assertion in the first information report that the appellant was amongst the persons who accompanied Mr. Dhanaji Gurav. Apart from the first informant, no other person has named the appellant as the member of the alleged unlawful assembly. Even the first informant has not attributed any role to the appellant. Premised on this backdrop, Mr. Mundargi would urge that the presence of the appellant on the campus of the college was not

unnatural as the appellant was admittedly an office bearer of the trust, on the date of the occurrence. It was further submitted that the endeavour of the prosecution to rope in the appellant as a co-conspirator on the strength of the statements of the hotel manager that the appellant had stayed over in hotel Saitej, is also of no assistance as the said status of the appellant also explains the presence at the hotel as well.

12. Mr. Yagnik, learned APP for the State would urge that once it is established that the appellant was a member of the unlawful assembly, in the prosecution of common object of which, serious offences were committed, the fact that no overt act is attributed to the appellant does not detract materially from the prosecution. In addition, according to Mr. Yagnik, since there is a charge of criminal conspiracy, the fact that no active role is attributed to the appellant pales in significance.

13. Mr. Daswadikar, the learned counsel for respondent No. 2, on the other hand, assailed the very tenability of the appeal under section 14A of the SC and ST Act. Indisputably, the appellant is a member of Scheduled Caste and, thus, the learned Special Judge has recorded that the offences punishable under the provisions of SC and ST Act, 1989 can not be invoked against the appellant. Once, the

applicability of the provisions of SC and ST Act, 1989 qua the appellant is ruled out, the appeal under section 14A of the Act cannot be entertained, urged Mr. Daswadikar.

14. On merits, Mr. Daswadikar submitted that the very claim of the appellant that he was a trustee of the People's Education Society, is fraught with infirmities. In any event, as there is material to demonstrate that the appellant was very much present at the time and place of occurrence and serious offences were committed in prosecution of the common object of the unlawful assembly, of which the appellant was a member, there can be no justification for exercise of the discretion in favour of the appellant.

15. As regards the tenability of the appeal, it may be apposite to extract the sub section (1) and (2) of section 14A:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

16. From the phraseology of sub section (1) and (2) of section 14A, it becomes abundantly clear that the appeal shall lie from any

judgment, sentence or order of Special Court or Exclusive Special Court to the High Court, both on facts and law. The submission on behalf of respondent No. 2 that there can be no appeal once the Special Judge holds that offences punishable under SC and ST Act, 1989 can not be arrayed against the accused, has the potential to lead to absurd consequences. The determinant is not the finding by the Special Court or Exclusive Special Court. It is the judgment or order passed by the Special Court or Exclusive Special Court after such Court entertainins the proceeding under the provisions of SC and ST Act, 1989. If the submission on behalf of respondent No. 2 is taken to its logical conclusion then there would be multiple forums against one and the same order passed by the Special Court depending upon the findings recorded by the Special Court qua different accused. We are thus not inclined to accede to the submission on behalf of the respondent No. 2.

17. On a careful perusal of the first information report, it becomes abundantly clear that the first informant has alleged that the appellant was a part of the mob which barged into the college campus. Indeed, there are allegations of vandalism and causing grievous hurt to the first informant and injured and attempt to commit murder of the first informant by the members of the unlawful assembly. However, the role attributed to the appellant is

that of being a member of the unlawful assembly. The allegation qua the appellant stops at that. It is imperative to note that neither in the first information report nor in the supplementary statement of the first informant nor in the statements of the injured and other witnesses, it was alleged that the appellant was a part of the group of assailants which broke open the grill gate and charged into the office of the first informant and assaulted the first informant and injured witnesses.

18. Apart from the allegations of being member of the unlawful assembly, levelled in the FIR, the prosecution has banked upon the statement of Mr. Jayprakash Arunkar, the Manager of hotel Saitej, where the appellant had allegedly lodged himself during the period 24th to 26th December, 2020. As the other accused were also allegedly present in the said lodge, the prosecution alleged that the conspiracy was hatched in the said hotel to commit the offences.

19. The presence of the appellant in the college and the hotel was sought to be explained on the premise that being a member of the board of trustees of People's Education Society his presence was not unnatural. At this juncture, we do not find it necessary to delve into the controversy as to whether the appellant was an office bearer of the said society. However, the claim of the appellant cannot

jettisoned away as wholly unsustainable. The minutes of the meeting of the governing body of the society dated 31st May, 2021 indicate that the appellant was removed from the membership of the said society in the said meeting. A copy of the change report submitted before the Charity Commissioner also records that the appellant was removed from the membership of the governing body of People's Education Society w.e.f. 31st May, 2021.

20. The situation which thus obtains is that apart from the allegations that the appellant was a part of the mob which ransacked the college and committed the alleged offences, there is no other material which incriminates the appellant. Undoubtedly, when the offences are committed in prosecution of the common object of an unlawful assembly, of which the accused is shown to be a member. proof of overt act is not warranted. The membership of the unlawful assembly itself is sufficient to render a person liable for the offences committed in prosecution of the common object of such assembly. However, in the instant case, following factors assume significance. The prosecution witnesses have alleged that the mob consisted of 30-45 persons. It appears to be a case of mammoth rioting. In such situation, the fact that no particular role is attributed to the accused assumes salience. Secondly, there is material to indicate that the genesis of the offence was in the tussle over the management of the

affairs of the society. The relations were fractious, in the least. Thirdly, in the backdrop of the nature of the accusation against the appellant, it does not appear that the custodial interrogation of the appellant is imperative.

21. A useful reference, in this context, can be made to the Constitution Bench judgment of the Supreme Court in the case of **Sushila Aggarwal and Others vs. State (NCT of Delhi) and Another**¹. The Constitution Bench summarized the discussion and conclusions in the case of **Gurbaksh Singh Sibbia vs. State of Punjab**² in paragraph 52. The following propositions are instructive:

52.3 The accused is not obliged to make out a special case for grant of anticipatory bail; reading an otherwise wide power would fetter the Court's discretion. Whenever an application (for relief under section 438) is moved, discretion has to be always exercised judiciously, and with caution, having regard to the facts of every case.

52.4 While the power of granting anticipatory bail is not ordinary, at the same time, its use is not confined to exceptional cases.

52.5 It is not justified to require Courts to only grant anticipatory bail in special cases made out by accused, since the power is extraordinary, or that several considerations spelt out in section 437 or other considerations, are to be kept in mind.

52.6 Overgenerous introduction (or reading into) of constraints on the power to grant anticipatory bail would render it constitutionally vulnerable. Since fair procedure is part of Article 21, the Court should not throw the provision (i.e. section 438) open to challenge "by reading words in it which are not to be found therein".

52.7 There is no "inexorable rule" that anticipatory bail

¹ (2020) 5 SCC.

² (1980) 2 SCC 565.

cannot be granted unless the applicant is the target of mala fides. There are several relevant considerations to be factored in, by the Court, while considering whether to grant or refuse anticipatory bail. Nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the accused's presence not being secured during trial; a reasonable apprehension that the witnesses might be tampered with, and "the larger interests of the public or the State" are some of the considerations. A person seeking relief (of anticipatory bail) continues to be a man presumed to be innocent.

22. On the aforesaid touchstone, reverting to the facts of the case, especially the nature of the occurrence and the role attributed to the appellant, as borne out by the material on record, we are of the view that a prima facie case for exercise of the discretion in favour of the appellant was made out. To add to this, the claim of the appellant that on the date of occurrence, he was office bearer of the People's Education Society cannot be thrown overboard. The appellant also appears to have roots in the society. The possibility of fleeing away from justice appears remote. Testing on the parameters which govern the exercise of the discretion under section 438 of the Code, in our considered view, the appellant is entitled to be given the benefit of pre- arrest bail.

23. For the foregoing reasons, the learned Special Judge was not justified in declining to exercise the discretion in favour of the appellant. Thus the impugned order is required to be interfered with and the appeal deserves to be allowed. Hence, the following order.

ORDER

- 1] The Criminal Appeal stands allowed.
- 2] The impugned order dated 26th February, 2020, to the extent the prayer of the appellant for pre-arrest bail came to be rejected thereunder, stands quashed and set aside.
- 3] The ad-interim order dated 29th July, 2021 stands confirmed.
- 4] In the event of arrest of the appellant Ashok Talwatkar in connection with C.R. No. 146 of 2019 registered with Mahad City police station, the appellant/accused No. 2 be released on bail on executing a personal bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- 5] The appellant shall furnish his current address and contact number to the investigating officer and, in the event of change in the address and contact number, the appellant shall immediately intimate the same to the investigating officer and/or the Court, as the occasion may arise.
- 6] The appellant shall cooperate with the investigating agency.
- 7] The appellant shall attend Mahad City police station on alternate Tuesday from 10 am to 12 noon for a period of two months and thereafter as and when directed by the investigating officer, till the filing of the chargesheet qua the appellant.
- 8] The appellant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant, victims or

any other prosecution witnesses.

9] In the event of filing of the charge sheet, the appellant shall regularly attend the proceeding before the learned Special Judge without fail.

10] The appellant shall not leave the country without prior permission of the learned Special Judge.

11] In the event of breach of any of the conditions in clause (5) to (10), the investigating agency shall be at liberty to move for cancellation of this order.

12] Appeal stands disposed of accordingly.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)