

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 793 OF 2021

Ravindra Shahjirao Patil and anr.

.....Appellants

V/s.

The State of Maharashtra and anr.

.....Respondents

* * * *

Ms. Manisha A. Devkar, *Advocate for the appellants.*

Mr. A.R. Patil, *APP for State-respondent no.1.*

Mr. Shantanu Joshi i/by. Mr. Swapnil Chopade, *Advocate
for respondent no.2.*

Coram : Sandeep K. Shinde, J.

Tuesday, 23rd November, 2021.

P.C. :

1. Heard.

2. It is an appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“Atrocities Act” for short).

3. Perused the complaint, Affidavit of Dr. Basavraj Shivpuje, Sub-Divisional Police Officer, Akulj Division, Solapur sworn on 17th November, 2020 and the village map annexed to the Affidavit. Applicants are seeking pre-arrest bail in C.R. No.656/2021 registered for the offences punishable under Sections 341, 143, 147, 149, 504, 506 of the Indian Penal Code and Sections 3(1)(s) and Section 3(1)(za) of the Atrocities Act. Before narrating the prosecution case, let me reproduce Section 3(1)(za)(A) of the Atrocities Act.

3. Punishments for offences of atrocities.-

(1)Whoever, not being a member of a Schedule Caste or a Scheduled Tribe,-

(za)obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to-

(A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage.”

. Section 18 of the Atrocities Act says that, Section 438 of the Code shall not apply to persons committing the offence under the Act.

4. Prosecution case in brief is that, appellants and the co-accused obstructed the complainant and her relatives from cremating the dead body of her brother-in-law in the cremation ground of Village-Malewadi. Complainant's case is that, few days before the alleged incident, her family members had filed a report against Vinayak Kudale and others at Akulj Police Station. Therefore, the accused in this crime were harbouring grudge against the complainant and her family. When complainant's brother-in-law expired and dead body was to be taken to the cremation ground, the appellants and the co-accused obstructed the funeral procession and asked the complainant, first to withdraw the complaint or else would not permit funeral on cremation ground, access to which was only through their fields. When this application was heard on 21st October, 2021, the

prosecution was directed to file an Affidavit and place on record, the particulars of the fields through which the access is available to the cremation ground. Accordingly, additional affidavit has been filed by Dr. Basavraj Shivpuje, Sub-Divisional Officer. Alongwith additional affidavit, certified copy of a map is placed on record. This map shows access to the cremation ground meant for the villagers, passes through the fields of the applicant and the co-accused.

5. In consideration of the facts of the case, in my view, the allegations constitute an offence under the Atrocities Act. Thus, in view of Section 18 of the Atrocities Act, the applicants are not entitled for pre-arrest protection. The appeal is rejected.

(Sandeep K. Shinde, J.)