

Mandira
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1701 OF 2019

Anil Balu Vitkar	]	
Residing at Agundewadi, Tal. Phaltan,	]	
District : Satara	]	.. Appellant

VERSUS

1. The State of Maharashtra	]	
Through P.I. Phaltan Gramin	]	
Senior Police Station, Dist : Satara	]	
	]	
2. Aaki Sanya Bhosale	]	
Residing at Sarde, Tal. Phaltan,	]	
District : Satara	]	
	]	.. Respondents

Mr.Hrishikesh Mundargi i/b Mr.Meghdeep Oak
for the Appellant.

Dr.F.R.Shaikh, APP for Respondent No.1/State.

Ms.Gauri Rao, Appointed Advocate by Legal Aid
for Respondent No.2.

**CORAM : S.S.SHINDE &
MANISH PITALE, JJ.**

**RESERVED ON : 24th FEBRUARY, 2021
PRONOUNCED ON : 12th MARCH, 2021**

JUDGMENT (PER MANISH PITALE, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.

2. This is an appeal filed under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**“the Atrocities Act”**) whereby the appellant has challenged the order dated 6th November, 2019, passed by the Special Judge and Additional Sessions Judge, Satara, thereby rejecting an application filed by the appellant for grant of anticipatory bail.

3. The appellant alongwith other accused persons are alleged to have committed murder of the husband of respondent No.2 (original informant) on 20th April, 2019. The First Information Report (**“FIR”**) was registered on 21st April, 2019 against unknown persons for the offences punishable under Sections 302, 307, 364, 504, 506 read with Section 34 of the Indian Penal Code (**“the IPC”**) and Sections 3(2)(v), 3(2)(va) and 6 of the Atrocities Act.

4. According to respondent No.2, some persons assaulted her and her husband brutally on an allegation that her husband had stolen their mobile. She alleged that although she did not know the names of the persons, she knew the community to which they belonged and that she would be able to identify them. On the basis of the aforesaid FIR, investigation was initiated and the accused persons were arrested on various dates while the appellant remained absconding. The appellant filed an application for grant of anticipatory bail, but it was rejected. Thereafter, on 22nd July, 2019, charge-sheet was filed wherein the appellant was shown as absconding. The appellant filed second application for grant of anticipatory bail, which was rejected by the impugned order dated 6th November, 2019.

5. Mr.Mundargi, learned counsel appearing for the appellant, submitted that the court below had erred in rejecting the application for anticipatory bail because there was no material brought on record by the investigating agency to link the appellant with the said offence. It is further submitted that even the appellant belongs to scheduled caste community and, therefore, there was no question of offences under the Atrocities Act being attracted. It was further submitted that the FIR was registered against unknown persons and the appellant was falsely roped in because he was a member of 'Tanta Mukti Samiti'. It was emphasized that even respondent No.2 i.e. the original informant had herself admitted that she did not know the names of the assailants, thereby indicating that there was every possibility of false implication of the appellant. On this basis, it was submitted that since there was no material to link the appellant with the offence, his application for grant of bail ought to have been allowed.

6. Mr.Shaikh, learned APP appearing on behalf of respondent No.1/State, vehemently opposed the appeal. It was submitted that the appellant was an absconding accused and that the FIR was registered as far back as on 21st April, 2019. It was submitted that the charge-sheet and the material brought on record with the same, indicated the involvement of the appellant.

7. Ms.Rao, learned counsel appearing on behalf of respondent No.2, also opposed the appeal and submitted that the husband of respondent No.2 was brutally murdered by the assailants and that there was sufficient material to link the appellant with the other accused persons as also the offence in question.

8. We have perused the material on record. In the FIR, it is stated that unknown persons assaulted the husband of respondent No.2. The postmortem report shows that the victim had suffered number of injuries on his body and that the death had occurred due to trauma of such injuries. The brutality of the assault is evident from the material on record. Respondent No.2 in her complaint, leading to registration of the FIR and also in her statement recorded during investigation, stated that the persons who assaulted her husband could be identified and that they were responsible for the death of her husband. She specifically stated that the assailants had carried out the assault on her husband on the allegation that he had stolen their mobile.

9. It is an admitted position that the appellant has been absconding since the registration of the FIR on 21st April, 2019. This is clear from the charge-sheet. The material on record also shows that other accused persons were arrested. The test identification parade was carried out wherein respondent No.2 identified three accused persons. Hence, we are of the opinion that there is no substance in the contention raised on behalf of the appellant that since the FIR was registered against unknown persons and he was not identified, there was no link between him and the incident in question. There was no question of the appellant being identified when he himself has remained absconding since the date of registration of the FIR.

10. As regards the contention of the appellant that he himself belongs to the scheduled caste community and, therefore, the offences under the Atrocities Act could not have been attracted, it is

a matter of trial and such contention could be raised, if at all, as defence by the appellant.

11. A perusal of the impugned order passed by the court below also shows that the aspect of number of eye-witnesses having witnessed the incident, has been appreciated and the court has come to a conclusion that there is, *prima facie*, sufficient material against the accused persons for the offence punishable under Section 302 of the IPC and offences under the Atrocities Act. We are of the opinion that the appellant cannot claim release on anticipatory bail when he himself has remained absconding for about two years. It cannot be said that the material on record indicates false implication of the appellant. All the contentions raised on behalf of the appellant, including he allegedly being a member of 'Tanta Mukti Samiti', are contentions in the nature of raising defence, which cannot be considered while examining the question as to whether the appellant is entitled for grant of anticipatory bail.

12. In view of the above, we find that there is no substance in the present appeal and it deserves to be dismissed.

13. Accordingly, the appeal is dismissed. However, we make it clear that the observations made here-in-above are, *prima facie*, in nature and confined to the adjudication of present appeal only.

14. We appreciate the sincere efforts taken by Ms.Rao, learned appointed advocate for respondent No.2 and we quantify her fees at Rs.7,500/-.

15. The High Court Legal Services Committee, Mumbai is directed to pay the said amount to the appointed advocate Ms.Rao within four weeks from the date of receipt of this order.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)