

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 349 OF 2020.

Rajani Dilip Shami,
Aged about 59 years,
Occupation – Service,
resident of 337/V Soni lane,
Sitabuldi, Nagpur.

... **APPELLANT.**

VERSUS

1.The State of Maharashtra,
through P.S.O. Sitabuldi,
Nagpur.

2.Smt. Asmita Amit Malviya,
Aged 32 years, resident of Soni Galli,
Near Big Masjid, Sitabuldi,
Nagpur.

... **RESPONDENTS.**

Ms. R.P. Jog, Advocate for the Appellant.
Shri S.D. Sirpurkar, A.P.P. for Respondent No.1.
Shri B.U. Waghmare, Advocate for Respondent No.2.

CORAM : VINAY JOSHI, J.

DATE : JANUARY 07, 2021

ORAL JUDGMENT :

Heard.

Admit. By consent of learned Counsel appearing for the

respective parties, the appeal is taken up for final hearing.

2. The appellant / accused is seeking to quash the impugned order of rejection of pre arrest bail and for grant of pre-arrest protection. An offence vide Crime No. 251/2020 has been registered at Sitabuldi Police Station against the appellant lady and her children for offence punishable under Sections 354 read with 34 of the Indian Penal Code, and Section 3[1][r] of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

3. The informant lady stated that the accused are her long neighbors and they used to frequently quarrel with neighboring persons. On 09.06.2020 in the evening, when the informant returned from her work, she noticed that all the accused were quarreling with her husband. At that time, the appellant abused her in the name of caste. The appellant's children also abused and her son manhandled her, hence the report.

4. The learned counsel for the appellant would submit that the FIR no where discloses that the informant belongs to Scheduled Caste or Scheduled Tribe, as well as there is no mention about the caste of the accused. It is her contention that the whole reading of

the FIR no where discloses that the act of insult or intimidation was intentional, meaning thereby there was no mensria. Lastly, it is stated that there was no member of public present, therefore, it cannot be said that the alleged offence was within public view.

5. The State has resisted to grant pre-arrest protection by stating that specific abuses are mentioned in the FIR. Learned counsel appearing for respondent no.2 also opposed to grant bail by supporting the order of trial Court.

6. According to the appellant, though she belongs to Muslim community, however, she was married to a person belonging to Scheduled Caste, and as such her husband as well as sons are members of Scheduled Caste. In such a scenario it is improbable for her to intentionally abuse a member of Scheduled Caste. The utterance in the name of caste "Mahar" requires consideration, whether such utterance amounts to intentional abuse in the name of caste.

7. In order to impress the requirement of adequate mensria, the appellant has relied on the decision of this Court in case of **Krishna Parmeshwar Gaikwad .vrs. State of Maharashtra –**

2019 All MR (Cri) 1717, wherein it is observed that the mensria is a decisive factor to constitute an offence. Moreover, to support the contention that mere name of caste would not suffice the purpose, reliance has been placed on the decision of the Hon'ble Supreme Court in case of **Gorige Pentaiah .vrs. State of A.P. and others – [2008] 12 SCC 531**.

8. It is submitted that merely because the occurrence took place in front of house, does not mean that it was within public view. In order to make distinction in between the term “public place” and “public view”, reliance has been placed on the decision in case of **Hitesh Verma .vrs. State of Uttarkhand and another - (2020) 10 SCC 710**. In the said case, the Hon'ble Supreme Court has expressed that the term ‘public view’ is specific and in absence of persons of members of public, excluding relatives or friends, that cannot be said to be within public view.

9. The contents of FIR does not disclose the specific caste of the parties and presence of some strangers. Though the crime was registered under Section 354 of the Indian Penal Code, the appellant being lady, it is difficult to accept said contention against her. It reveals that there was long drawn dispute in between the

neighbors. Copy of old criminal case of the year 2000 has been produced to show inimical terms. It is now well settled that in absence of prima facie case the provisions of Section 438 of the Code of Criminal Procedure can be made applicable in prosecution under the Atrocities Act.

10. This Court has already granted interim protection to the appellant vide order dated 10.07.2020. which is prevailing till date. There is no complaint that the appellant has misused the liberty. Having regard to all these factors and the nature of accusation, there is no need for custodial interrogation. In view of that, the Appeal is allowed. The impugned order dated 09.06.2020 passed by the District Judge-6 and Additional Sessions Judge, Nagpur in Criminal M.A.No. 1434/2020 is hereby quashed and set aside, so far as it relates to rejection of application of the applicant. The interim order passed by this Court on 10.07.2020, is hereby made absolute on same terms and conditions, with a rider to follow the condition of attendance till the filing of the charge sheet.

JUDGE

Rgd.