

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

CRIMINAL APPEAL NO. 350 OF 2021

Shivaji S/o Dinkar Borade,
 Aged about 60 years,
 Occupation Agriculturist,
 R/o. Kolhi Gawali, Taluka Motala,
 District Buldhana.

... **APPELLANT**

VERSUS

1. State of Maharashtra,
 Through Police Station Officer,
 Dhamangaon Badhe,
 District Buldhana.

2. Prahlad S/o Hari Suradkar,
 Aged about 55 years,
 Occupation Agriculturist,
 R/o Kolhi Gawali, Taluka
 Motala, District Buldhana.

... **RESPONDENTS**

Shri Vivek Awchat, Advocate for the appellant.
 Shri I.J. Damle, A.P.P. for respondent no.1/State
 Shri R. D. Hajare, Advocate (appointed) for respondent no.2.

CORAM : VINAY JOSHI, J.

DATED. : 24/11/2021

ORAL JUDGMENT :

1. Heard. **ADMIT.** By consent, the appeal is taken up for final hearing.

2. This is an appeal under Section 14-A of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC and ST Act') challenging the order of rejection of pre-arrest bail dated 17/08/2021 passed by the Trial Court in Crime No.239/2021 registered with Dhamangaon Badhe Police Station, District Buldhana for the offence punishable under Sections 324, 504, 506 read with 34 of the Indian Penal Code and Sections 3(1)(r), 3 (1) (s) and 3(2)(va) of the SC and ST Act.

3. Learned A.P.P. has resisted bail by filing affidavit-in-reply contending the factual aspects and statutory bar. The learned Counsel appearing for informant also objected by stating that the appellant was present at the time of occurrence.

4. It is the prosecution case that the appellant and co-accused have abused informant in the name of caste and assaulted him by means of knife. Perused reply in resistance and case diary. At the instance of report lodged by informant Prahlad Suradkar, crime was registered. He stated that on 07/08/2021 at around 07.00 p.m. in the evening, while he was in the village, co-accused Dilip Sudhakar Borade arrived and started to beat him. Moreover, co-accused abused him in

filthy language and also in the name of caste. The informant stated that appellant also came on the spot and caught hold him, on which co-accused Dilip Borade tried to inflict knife blow. It is alleged that both of them also beaten him by slaps and fists blows.

5. Appellant's learned Counsel submitted that the appellant is husband of the Sarpanch. The informant used to object the welfare activities being of rival group and due to that false report has been lodged. He has produced copy of NC report dated 26/04/2021 filed by Gram Sevak, Kolhi Gawali, Taluka Motala, Dhamangaon, District Buldhana against the informant to show his anti social activities. The learned Trial Court has declined to entertain pre-arrest bail due to statutory bar created under Section 18-A of the SC and ST Act.

6. Undisputedly, the provisions of Section 438 of the Criminal Procedure Code would apply if the prosecution is not able to make out the prima facie case under the provisions of the SC and ST Act. Perusal police report as well as informant's supplementary statements, reveals that the allegation of giving abuses in the name of caste are leveled against co-accused Dilip Borade. Though, it is stated that appellant has abused to the wife of informant however, it was a vague allegation. In

order to attract the provisions of Section 3 (1) (r) & (s), there should be intentional insult to humiliate a member of a Scheduled Caste and abuses must be in the name of caste. Prima facie, police papers do not disclose the abuses allegedly given by the appellant in detail. Moreover, the allegation of giving abuse in the name of caste are against co-accused Dilip Borade only.

7. It is not the case that appellant has used weapon in the commission of crime. Therefore, prima facie it is difficult to hold that the provisions of Section 324 of the Indian Penal Code would attract. It is the matter of trial whether appellant has shared common intention at the relevant time. Having regard to this fact no prima facie case is made out to attract the provisions of the SC and ST Act, hence bar created under Section 18-A would not apply. The above observations are made only for the purpose of deciding this appeal which has no impact on the merits of the Trial.

8. In view of that appellant is entitled for pre-arrest protection, hence following order is passed :

(a) The Criminal Appeal stands allowed.

(b) The impugned judgment and order dated 17/08/2021 passed

by Special Court Malkapur, District Buldhana in Criminal Application (ABA) No.214/2021 is hereby quashed and set aside.

- (c) Ad-interim order dated 30/08/2021 is hereby made absolute upon same terms and conditions.
- (d) Henceforth, appellant shall attend concerned police station as and when called. The appeal stands disposed of accordingly.

9. Fees be paid to the appointed Counsel, as per Rules.

JUDGE

R.S. Sahare