

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL APPEAL NO.161 OF 2022

SAVITA W/O SANTOSH EDKE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Appellant : Mr. More P. P.
APP for Respondent No.1-State : Mr. S. P. Sonpawale
Advocate for Respondent No.2 : Mr. Patwardhan R. P. (Appointed)

...
CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 06-07-2022

ORDER :

1. Heard both sides.
2. Since arguable points are made, the appeal is **admitted**.
3. By consent, the appeal is taken up for final disposal.
4. Present appeal has been filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act to challenge the order dated 16-02-2022 passed by the learned Special Judge under Atrocities Act, Kandhar District Nanded, in Criminal Miscellaneous Application (Bail) No.12 of 2022 thereby rejecting the application under Section 438 of Cr.P.C. filed by the present appellant who was posed as accused No.20 in Crime No.260 of 2021 filed on the basis of First Information Report lodged by respondent No.2 on 22-12-2021 with Loha Police Station, Taluka Loha,

District Nanded, for the offence punishable under Section 143, 147, 148, 149, 324, 452, 323, 504, 506 of Indian Penal Code and Section 3 (i)(r), 3(i)(s), 3(2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, and Section 135 of Maharashtra Police Act.

5. Heard learned Advocate Mr. P. P. More for appellant, learned Advocate Mr. R. P. Patwardhan for respondent No.2 and learned APP Mr. S. P. Sonpawale for respondent No.1-State.

6. Perusal of the First information Report would show that respondent No.2 is the Sarpanch of village Borgaon, Taluka Loha, District Nanded, and she is member of Scheduled Caste. A meeting was organized on 22-12-2021 which was the Gramsabha and it is stated that it started at about 11.00 a.m. and a decision was taken on 11.30 a.m. Certain persons were in favour of the subject and some were against. After it was decided in favour of those persons who were in favour of the subject, it is stated that those who were against, started raising chaos and abused the informant in the name of caste. It is then stated that she was assaulted with knife by co-accused and others had assaulted her sons and her brother-in-law by stones. It is then stated that the present appellant (though

under a wrong first name) had assaulted her by making her to lie on the ground, pulling her hair and assaulting her by hands. The other persons who had come to rescue her, were also assaulted.

7. The first and the foremost fact that is required to be considered is as to whether 21 or 20 persons can abuse a person in chorus the same abuse. The answer would be in the negative. There cannot be a chorus while abusing anybody. Further, the informant has given the name of the present appellant as Kavita when in fact she is Savita.

8. Learned APP submits that the other witnesses have given the name of the appellant properly as Savita, but then upon inquiry, learned APP submits that there is supplementary statement of the informant. The question then arises that if the informant could not have given the proper name of the appellant, whether she could have been so involved in giving abuses to the informant in the name of caste. It is further stated in the FIR that after giving abuses in the name of caste, it is said why you have come in the temple (the venue of the Gramsabha), how you have been made Sarpanch and they would see that how she manages the work. It is to be noted that the informant has not given when she was elected as Sarpanch.

Definitely it ought to have been in the past than 22-12-2021. She has not given the background but definitely there is a room to believe that she would have been elected as Sarpanch, and therefore, it is hard to believe that after so many days/months there would have been abuse or questioning as to who has made her Sarpanch and they would see as to how she works. Further, she has stated that the proceeding of the Gramsabha started at 10.00 a.m. and lasted till 11.30 a.m. If the accused persons would have had any objection for the entry of the informant in the temple, then they could have opposed the venue itself or would have raised objection prior to starting of the Gramsabha itself. This cannot happen after the transaction has taken place. Thus, it appears that the scenario was different than what has been projected. Therefore, as regards the present appellant is concerned, definitely prima facie offence under Section 3 (1) (r), 3 (1) (s) of the Atrocities Act which are non-bailable offences are not transpiring, and therefore, there was no bar to entertain her bail application under Section 438 of Cr.P.C. The learned Special Judge went wrong in not assessing the First Information Report on its face also and wrongly held that the said application before him was barred under Section 18 of the Atrocities Act. When the offences are not made out under the Atrocities Act

against the present applicant and it can also be considered that the FIR appears to be the outcome of some political rivalry and the other sections even of the Indian Penal Code does not require custodial interrogation of the appellants, the application ought to have been allowed by the Special Judge.

9. It is also doubtful as to whether the ingredients of offence under Section 143, 147, 148, 149, 452 of the Indian Penal Code would be attracted in this case in view of the fact that it was the Gramsabha and the general public was invited and from the contents of the First Information Report it cannot be gathered that there was prior meeting of mind to have an unlawful assembly. Further the venue was the temple in the village, and therefore, prima facie it does not attract the ingredients of criminal trespass. Under such circumstances, when the custodial interrogation is not required, the appeal deserves to be allowed, so also the application deserves to be allowed. Hence, following order.

ORDER

- 1) The appeal stands allowed.
- 2) Order dated 16-02-2022, passed by learned Additional Sessions Judge, Kandhar, in Criminal Bail

Application No.12 of 2022, is hereby set aside.

3) The interim order passed by this Court on 26-02-2022, is hereby confirmed.

4) In other words, in the alternative if the appellant is not formally arrested, in the event of arrest of appellant Savita w/o Santosh Edke, in connection with Crime No.260 of 2021, registered with Loha Police Station, Taluka Loha, District Nanded, for the offences punishable under Section 143, 147, 148, 149, 324, 452, 323, 504, 506 of Indian Penal Code and Section 3 (i)(r), 3(i)(s), 3(2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, and Section 135 of Maharashtra Police Act, she be released on PR and SB of Rs.15000/- (fifteen thousand).

5) The appellant shall not indulge in any criminal activity and she shall not tamper with the evidence of prosecution in any manner.

6) Fees of the appointed advocate is quantified at Rs.5000/- (in words rupees five thousand only), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.