

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 239 OF 2022

KIRAN SATISH AMRUTRAO

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Mr Rajkumar B. Dhaware, Advocate for Appellant
Mr P.G. Borade, APP for the State
Mr Akshay D. Kulkarni, Advocate for Respondent No.2

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 3rd OCTOBER, 2022

PER COURT :

1. Not on Board. Taken on Board at the request of Mr Rajkumar Dhaware, learned counsel for the appellant.
2. Heard finally with consent of both the sides.
3. The appellant is challenging the order of rejection of his anticipatory bail passed by the learned Special Judge (Atrocities), Osmanabad in Bail Application No. 90 of 2022.
4. It is necessary to have a glance on the facts which are important and relevant. Prakash Shatrughna Kadam is resident of Bhimnagar, Tuljapur (Scheduled Caste). On 01.03.2022, Prakash/first informant along with his wife had been to Nariman Point area, Tuljapur. It was about 8.30 p.m. Both of them were returning to their house on foot.

They reached infront of the hotel of one Kokate when Kiran Satish Amrutrao (appellant) resident of Khatkal Galli, Tuljapur gave call to the first informant and alleged to have picked up quarrel on account of one plot infront of Matangi Mandir. He alleged to have given abuses to the first informant and his wife with reference to caste and threatened them with dire consequences.

5. First informant/Prakash Kadam rushed to the Police Station, Tuljapur on the very day i.e. on 01.03.2022 and lodged FIR about the said incident at 22.49 hours and it was registered at 22.56 hours under section 504 and 506 of IPC and under sections 3(1)(r) and 3(1)(s) of The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for the sake of convenience).

6. In apprehension of arrest in above said crime, the appellant has rushed to the Special Judge (Atrocities), Osmanabad and sought anticipatory bail. His application for anticipatory bail vide Criminal Bail Application No.90/2022 came to be rejected by the Special Judge (Atrocities), Osmanabad vide order dated 16.03.2022.

7. By way of this appeal, the appellant has challenged the said order and prayed for same relief of anticipatory bail. This Court (Coram : R.G. Avachat, J.) vide order dated 23rd March, 2022 was pleased to grant interim protection with certain conditions. The said interim protection seems to have been continued from time to time.

8. The learned counsel for the appellant seeks leave to place on record copy of notice issued by the Registrar (Judicial) of this Court dated 24th March, 2022 and 27th April, 2022 whereby this Court (Coram : R.G. Avachat, J.) was pleased to issue directions to the Registry to make it clear that wherever interim protection/interim relief is there, that would be continued and there is no need to apply for the same. The copy of notice dated 24.03.2022 and 27.04.2022 are taken on record and marked 'X' collectively for identification.

9. As per the notice, issued by this Court, the interim relief granted by this Court is continued in this case till 07.06.2022. Thereafter, interim protection seems to have not continued as appearing from the record whatever may be the reason.

10 It is to be seen whether interim protection granted by this Court earlier needs to be confirmed in the background of allegations levelled in the FIR.

11 Heard Mr Dhaware, learned counsel for the appellant, Mr Kulkarni, learned counsel for respondent No.2 and Mr P.G. Borade, learned APP for the State.

12 Mr Dhaware, learned counsel for the appellant invited my attention to the copy of one N.C. report filed by the present appellant against the first informant (Page No.23). He points out that this appellant has lodged the N.C. report about the same incident promptly with Tuljapur

Police Station on 01.03.2022 at 01.53 hours. He submitted that in order to give counter blast to the case of present appellant, the first informant Prakash Kadam has lodged the false FIR against the appellant on account of property dispute. He submitted that the provisions of the Atrocities Act do not attract against the appellant. As such, there is need to consider the prayer for anticipatory bail. He submitted that the alleged incident had taken place during night hours. According to the provisions of the Atrocities Act, there must be abuses with reference to the caste in a public view which is completely missing in this case. He submitted that having regard to the allegations levelled in the FIR, the appellant is entitled to get anticipatory bail when the provisions of the Atrocities Act do not *prima facie* attract.

13 Mr Kulkarni, learned counsel for respondent No.2/first informant strongly opposed to grant anticipatory bail. He invited my attention to the copy of report submitted by the Investigating Officer to the Special Court dated 11.03.2022. He submitted that the Investigating Officer has recorded statements of four witnesses who have supported to the version of first informant. He submitted that the provisions of Atrocities Act attract in this case having regard to the abuses given by the appellant to the first informant and his wife with reference to the caste. As such, bar provided under section 18 of the Act comes into picture. As soon as bar comes into the picture under the said Act, application for anticipatory bail cannot be entertained. It is liable to be dismissed.

14 Mr Borade, learned APP for the State also argued on the similar lines. He also invited my attention to the report of the Investigating Officer and submitted that all the concerned witnesses have supported to the case of first informant. The appellant is not entitled to get anticipatory bail.

15. By way of reply, learned counsel for the appellant submitted that one of the statements is of Suvarna Prakash Kadam, who happens to be the wife of first informant, and as such, she supposed to support her husband.

16. Mr Kulkarni, learned counsel for respondent No.2 has placed his reliance on the citation in case of ***Prathvi Raj Chauhan Vs. Union of India*** AIR 2020 SC 1036. By placing reliance on the above said citation, Mr Kulkarni, learned counsel for respondent No.2 strongly opposed to allow this appeal.

17. I have considered the submissions of both the sides. I have also gone through the copy of FIR lodged by respondent No.2/first informant, copy of NC report lodged by the appellant against the first informant, copy of report submitted by the Investigating Officer before the Special Judge and other papers.

18. So far as sections 504 and 506 of IPC are concerned, those are bailable offences. Section 3(1)(r) and 3(1)(s) registered against the appellant under Atrocities Act are non-bailable offences. Section 3(1)(r) provides that whoever, not being a member of Scheduled Caste or Scheduled Tribes,- intentionally insults and intimidates with intent to

humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; the provision attracts. Section 3(1) (s) speaks that whoever, abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within a public view; the provision attracts.

19. Having regard to the above ingredients of section 3(1)(r) and 3(1)(s) of the Atrocities Act, I have gone through the copy of FIR which is foundation of the prosecution. On going through the same, it would find that present appellant alleged to have given abuses to the first informant and his wife when they were proceeding from the road in front of hotel Kokate. The specific abusive words are also mentioned in the FIR. However, section 3(1)(r) provides that specific abuses words with reference to the caste must be hurled with an intention to insult that member of the Scheduled Caste or Scheduled Tribe or intimidates with intent to humiliate of members of Scheduled Caste or Scheduled Tribe in any public place within a public view. Though alleged incident had taken place on the public road and within a public view, the main ingredient of intentionally insult or intimidates with intent to humiliate members of the scheduled caste is missing in the FIR as *prima facie* appearing. To attract Section (3)(1)(r) of the Atrocities Act, ingredient is missing after careful examination of the FIR. Mere hurling abuses with reference to caste do not attract 3(1)(s) of the Atrocities Act as held by this Court in ***Nandkishor Haribhau Kadam and others Vs. State of Maharashtra (2022 ALL MR (Cri.) 881).***

20. Moreover, very genesis of the FIR is very much doubtful. It is pointed out by the learned counsel for the appellant that the appellant has filed NC report about the same incident much earlier in point of time. The appellant filed the NC report about the same incident on 01.03.2022 in the wee hours i.e. at 1.53 hours at Tuljapur Police Station, which indicates about giving prompt information to the Police. If such kind of alleged incident had taken place of giving abuses with reference to the caste of the first informant, the first informant could have lodged the FIR promptly with the Police Station, but there seems be considerable delay in lodging of the FIR. It may be safely inferred that the first informant after knowing about the filing of NC report by the appellant, he might have prompted to lodge the FIR by attracting the provisions of the Atrocities Act. This is the factual scenario as appearing from the record.

21. Mr Kulkarni, learned counsel for the respondent has placed his reliance in ***Prathvi Raj Chauhan Vs. Union of India***. That proposition relates to the bar provided under section 18 of the Atrocities Act. In para No. 83, the Hon'ble Supreme Court has laid down certain parameters/directions and the objects of the Act.

22. Having considered the facts of the case and material on record, *prima facie*, the provisions of the Atrocities Act do not attract in view of genesis of the prosecution which relates to dispute about purchase of open plot in front of Matangi Samaj Mandir at Tuljapur. As such, it would be just and proper to grant protection to the appellant by giving benefit of section 438 of Cr.PC. Bar provided under section 18 of the Act does not

attract in the case.

23. With the above reasons, the criminal appeal needs to be allowed as under :-

ORDER

- (I) The criminal appeal stands allowed.
- (II) The impugned order passed by the Special Judge (Atrocities), Osmanabad in Bail Application No. 90 of 2022 dated 16.03.2022 is hereby quashed and set aside.
- (III) In the event of arrest of appellant/Kiran Satish Amrutrao in connection with Crime No.064 of 2021 registered at Tuljapur Police Station, Tuljapur, Dist. Osmanabad, he shall be released on bail on his furnishing PR Bond of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two solvent sureties of the like amount on the following conditions :-
 - (a) The appellant shall report his attendance once in a week i.e. on every Monday between 11.00 a.m. to 12.00 p.m. till filing of the charge sheet.
 - (b) The appellant shall remain present as and when called by the Investigating Officer and co-operate with the Investigating Agency.
 - (c) The appellant shall not tamper with the prosecution witnesses and evidence in any manner.

- (d) Inform to the concerned Court and Police Station accordingly.
- (e) The criminal appeal stands disposed of.
- (f) The observations made by this Court are limited to the extent of deciding this appeal under the Atrocities Act. The trial court shall not get influenced by the observations made by this Court while deciding this appeal.

[SHRIKANT D. KULKARNI, J.]

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