

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.458 OF 2022

Santosh Chandrakant Shinde,
Age-36 years, Occupation:Business,
R/o-House No.675, Sangale Galli,
Nalegaon, Ahmednagar,
Dist-Ahmednagar.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station Kotwali,
Ahmednagar, Dist-Ahmednagar,
- 2) Mayuri Shivaji Ulhare,
Age-22 years, Occupation-Service,
R/o-Behind Mohata Devi Temple,
Venkatesh Society, Shivaji Nagar,
Kalyan Road, Ahmednagar,
Dist-Ahmednagar,
Mob. No.9168461980.

...RESPONDENTS

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Mr.Shashikant E. Shekade Advocate for Appellant.
Mr.A.M. Phule, A.P.P. for Respondent No.1.
Mr.Mahesh P. Kale Advocate for Respondent No.2.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 22nd JULY, 2022

ORDER :

1. Learned Advocate Mr. Mahesh Kale submits that he has

instructions to appear for respondent No.2. He may file Vakalatnama with the office.

2. Heard learned Advocate Mr. Shekade appearing for the appellant, learned APP Mr. Phule appearing for respondent No.1 State and learned Advocate Mr. Kale appearing for respondent No.2.

3. Present respondent No.2 – informant lodged the First Information Report (for short "FIR") on 1st May 2022 in respect of an alleged incident that had taken place on 22nd April 2022. Thus, there appears to be some delay in lodging the FIR. However, the informant has tried to give reason for the delay stating that since she was assaulted, she was taken to hospital by the police and then she had gone to District Superintendent of Police on 26th April 2022 to lodge the report. Though she says that she has given complaint, it is not clear from her FIR as to whether that complaint was in writing. If that was in writing, then the question would be, whether the written FIR that was filed by her on 1st May 2022 can be said to be the FIR as contemplated under Section 154 of the Code of Criminal Procedure.

4. At this prima facie stage, we are required to consider the allegations against the appellant appearing in the FIR and whether those allegations attract offence under the Atrocities Act against him or it can be covered only under the Sections of Indian Penal Code. As regards the present appellant is concerned, he is stated to have involved at two places and at two times on the same day i.e. 22nd April 2022. Earlier the incident is stated to have taken place at about 2.00 p.m. in front of Mohta Devi temple and the second incident is stated to have occurred at about 9.30 p.m. in front of the house of the informant. It is firstly stated that along with the co-accused, the appellant had also abused the informant and her family members, however, those abuses have not been quoted. Thereafter, the informant and others came out of the house and then co-accused Balu Vidhate and Meena Vidhate abused the family of the informant in the name of caste. Thereafter, it is contended that the present appellant had assaulted the informant and others with kicks and fists. The bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act") to the application under Section 438 of the Code of Criminal Procedure would be in respect of non bailable offences under the Atrocities Act,

however, apparently i.e. prima facie from the contents of the FIR, it cannot be gathered that the offences under the Atrocities Act are made out against the appellant.

5. The present appellant had approached the Special Judge under the Atrocities Act, Ahmednagar seeking bail under Section 438 of the Code of Criminal Procedure vide Bail Petition No.759 of 2022. It will have to be observed that in spite of citing so many decisions of this Court, the learned Special Judge has not considered the case in proper perspective. Reference is made to the FIR, supplementary statement of the complainant and the statements of the witnesses Yamunabai Ullhare and Rushikesh Ullhare as well as their statements under Section 164 of the Code of Criminal Procedure. Perusal of the same would show that the only statement that has been made is that the present appellant had assaulted the informant and others by kicks and fists. The learned Special Judge stretched the said act alleged against the appellant to infer the intention also. No doubt the intention is always buried in the heart of the accused, however, it was not thought by the learned Special Judge, as to whether for bailable offences also under an Atrocities Act / Indian Penal Code Sections, there would be bar under Section 18 of the Atrocities Act to file an application for anticipatory bail. Under such

circumstance, the appeal deserves to be allowed. Hence following order:-

ORDER

(I) Appeal stands allowed.

(II) Interim protection granted to the appellant by this Court by order dated 5th July 2022 stands confirmed. It is clarified that in the event of arrest of appellant – Santosh Chandrakant Shinde in connection with Crime No.320 of 2022 registered with Kotwali Police Station, Ahmednagar District-Ahmednagar for the offences punishable under Sections 323, 324, 325, 504, 506, 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act, he be released on bail on P.R. and S.B. of Rs.15,000/- each, if already not released.

(III) The appellant shall not tamper with the evidence of the prosecution in any manner.

(IV) The appellant shall remain present before the Investigating Officer as and when called.

[SMT. VIBHA KANKANWADI, J.]