

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 503 OF 2022

Mr. Vikas Ashok Nikam	Appellant
Versus	
The State of Maharashtra & Anr.	Respondents

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Mr. Prashant P. Jadhav, Advocate for the appellant.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Ramji T. Kotali i/by Ambadas Bansode for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th AUGUST, 2022

PC :

1. This is appeal under section 14-A of the Scheduled Caste and Scheduled Tribe Act. The appellant is apprehending arrest in connection with F.I.R. No. 82 of 2022 registered with Gandhi Nagar Police Station, Kolhapur for offences punishable under Sections 143, 147, 148, 149, 323 324, 354, 504, 506 and Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the SC and ST (Prevention of Atrocities) Act. The FIR was registered on 18.04.2022.

2. The incident in question had allegedly occurred on 18.04.2022. The complainant has alleged that at about 07:45 am the brother in law of the complainant was

removing drumsticks from the tree near the plot of accused. He was questioned and abused by the accused. On noticing the commotion, the complainant came out of the house and tried to intervene. The father of the appellant abused the complainant on the basis of caste. At that time, the appellant and his brother came to the spot. The appellant was aware that the complainant belongs to Schedule Caste. He caught neck of the complainant and tore her gown. Thereafter, son-in-law of accused No.1 assaulted her. The mother of appellant had also intervened and participated in assault. At that time, the brother of complainant, who is residing the neighbourhood came to the spot to intervene in the quarrel. He was assaulted by one of the accused. The people from the neighbourhood gathered at the spot. The appellant is working in Armed forces. He threatened them of dire consequences.

3. The appellant preferred an application for anticipatory bail before the Sessions Court which has been rejected by order dated 27.04.2022. However, the application for anticipatory bail preferred by parents of the appellant was allowed by the same order.

4. Learned advocate for the appellant submits that on the same day, FIR was registered at the instance of mother of the appellant vide FIR No. 83 of 2022 for offences punishable under Sections 354, 354-B, 143, 147, 148, 324, 323, 504, 149 of the IPC. Wherein, the complainant and others were impleaded as accused. It is submitted that after the incident referred to in the FIR lodged by mother of the appellant, she had approached the police. She was forwarded for medical examination by providing medical Yadi and FIR was registered subsequently.

5. Learned APP submitted that, FIR *prima facie* makes out the offences under the Atrocities Act. In view of Section 18 of the Atrocities Act, there is legal bar for granting anticipatory bail. The injuries support the case of the prosecution. Statement of Dattatray Bansode was recorded which support the prosecution case. The appellant is working in Army and it is not expected that he would indulge in act of assault.

6. Learned advocate for respondent No.2 has opposed the application for anticipatory bail. The affidavit in reply has been filed on behalf of respondent No.2. It is submitted

that content of the FIR makes out the offences against the appellant. Hence, bar under Section 18 of the Atrocities Act is attracted. Assuming that Dattatray Bansode is not an independent person, for committing the offences other than Section 3(1)(r)(s) of the Act, there is sufficient material on record against the appellant. The offences are clearly made out against the appellant. He relied upon the observation of the Sessions Court while rejecting the application for anticipatory bail. Cross FIR was registered against complainant and others and application for anticipatory bail was preferred which has been allowed.

7. The advocate for appellant has submitted that he is working in Army and he was falsely implicated in this case. It is pertinent to note that cross case has registered on the same day against the opponents for the offences as stated herein above. In the cross case, there are allegations against the first informant and others. The accused in the cross case were granted anticipatory bail. Although, in the FIR it is alleged that several people from the neighbourhood had gathered in the incident, investigation papers disclose that only one persons statement was recorded, who is related to the complainant. Proforma of the charge-sheet

indicate that the investigation is completed and charge-sheet is already filed against the accused. Law relating to bar under Section 18 of the Atrocities Act is well settled. If the offence is not made out, there is no impediment in allowing the application for anticipatory bail. The Apex Court in the case of **Dr. Subhash Kashinath Mahajan vs The State of Maharashtra (Criminal Appeal No.416 of 2018 dated 20th March, 2018)** has also observed that malafide registration of FIR would also be ground for granting anticipatory bail. It is noted that the appellant is working in Army.

8. Considering the factual matrix of this case, bar under Section 18 of the Atrocities Act would not be impediment in exercising the power under Section 438 of Cr.P.C. hence, case is made out for allowing appeal.

ORDER

- (i) Criminal Appeal No. 503 of 2022 is allowed.
- (ii) Order dated 27.04.2022 passed by Sessions Court rejecting application for anticipatory bail is set aside.
- (iii) In the event of arrest of the appellant in connection with FIR No. 82 of 2022 registered with Gandhi Nagar police station, Kolhapur, he be released on bail on executing PR

bond in the sum of Rs. 20,000/- with one or more sureties in the like amount.

(iv) The appellant shall appear before the Investigating Officer as and when called for.

(v) The appellant shall not tamper with the evidence.

(vi) Criminal appeal stands disposed of.

(PRAKASH D. NAIK, J.)