

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

CRIMINAL APPEAL NO. 765 OF 2022

Ritik Prakash Suryawanshi

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Mahesh Vaswani a/w. Ms. Dharini Nagda a/w. Ms. Shreya Tiwari i/b. Ms. Chitra Anant Salunke for Appellant.

Smt. M. R. Tidke, APP for State/Respondent No.1.

Mr. Nitin Satpute, for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 18th OCTOBER 2022

PC :

1. The Appellant has challenged the order dated 23/06/2022 passed by learned Additional Sessions Judge, Mumbai; whereby the Appellant's application for anticipatory bail i.e. A.B.A. No.850 of 2022 was rejected. The Appellant is seeking anticipatory bail in connection with C.R.No.38 of 2022 registered at Trombay police station on 10/02/2022 under sections 326, 509, 323 and 504 r/w. 34 of I.P.C. and under sections 3(1)(r)(s)(w), 3(2)(va) and U/s.6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC & ST Act').

2. The F.I.R. is lodged by the Respondent No.2. He has stated that, his sister had lodged a complaint against one Machhindra Suryavanshi in the year 2018 under section 376 of I.P.C. and under POCSO Act. On 09/02/2022, at about 9.30p.m. he saw Machhindra standing in his area. He took his photograph. At that time, Machhindra told him that his case had resulted in acquittal and now there was no use in taking his photograph. It is alleged that, Machhindra then abused the first informant with respect of his caste. He also abused the informant's mother and sister. At that time, Machhindra started abusing and assaulting him with kicks and fist blows. It is further alleged that, Machhindra's brother Jitendra and the present appellant came at the spot. Jitendra picked up an iron rod and gave a blow on the head of the informant. The informant's father came there to intervene. It is alleged that the appellant then assaulted him with kicks and fist blows. Machhindra assaulted informant's mother. The informant's sister then called the police who came at the spot. The informant and Machhindra were taken to Shatabdi hospital and thereafter this F.I.R. is lodged at 11.00a.m. on 10/06/2022.

3. Learned counsel for the Appellant submitted that this is a false case. He is falsely implicated. In fact, the aforementioned Machhindra had lodged an F.I.R. at the same police station on 10/02/2022 at 9.00a.m. regarding the same incident which was registered vide C.R.No.36 of 2022 U/s.326, 323 and 504 r/w. 34 of I.P.C. It was mentioned in the F.I.R. that the first informant in the present case Amar started abusing and assaulting Machhindra. He was joined by his parents and sister. All of them started assaulting him. Amar gave a blow with iron spade on his head, back and left hand. When his elder brother Jitendra came to intervene, Amar assaulted Jitendra on his head and left hand. All of them assaulted Machhindra and Jitendra. Thereafter Machhindra and Jitendra were taken to hospital. They had suffered fracture to their hands. On the next day in the morning at 9.00a.m. Machhindra lodged this F.I.R. vide C.R.No.36 of 2022.

4. Learned counsel for the Appellant submitted that the appellant is a young boy. He is roped in because he was related to Machhindra. The main dispute and fight was between Machhindra and Amar. In any case, the appellant's role is very minor. He is

alleged to have assaulted Amar's father with kicks and fist blows. All the serious allegations regarding hurling abuses with reference to caste of the informant are made against other accused.

5. Learned counsel for the Respondent No.2 relied on Section 8 of the SC & ST Act to contend that, there is a presumption against the appellant. He further submitted that, considering that all the accused had acted in furtherance of their common intention, the offence under the Atrocities Act is made out. Amar has suffered serious injury on his head and, therefore, anticipatory bail should not be granted; as there is bar U/s.18 of the Act.

6. Learned APP produced investigation papers. She opposed grant relief in this appeal.

7. I have considered these submissions and I have perused the investigation papers. The informant Amar had suffered grievous injury to his head. However, that injury is specifically attributed to the blow given by Jitendra. The statement of Amar's mother describes the beginning of the quarrel. She has stated that,

Machhindra started assaulting her and, therefore, Amar came there to save her. At that time, Machhindra's brother Jitendra gave a blow with an iron rod on the head of Amar. At that time, Ashok Karande i.e. Amar's father came there. At that time, Machhindra gave a blow on her daughter's left hand. It is alleged that the applicant assaulted Amar's father with kicks and fist blows and even Amar's father assaulted the Appellant with fist blows. Thus, the informant's mother's statement shows that, there was a fight between Amar's father and the applicant. The applicant had come on the spot subsequently. The main role is attributed to Jitendra. The F.I.R. itself mentions that, Jitendra had picked up an iron rod, which was lying at the spot, and had given a blow with that rod on the head of the first informant. This shows that the appellant had not come at the spot with Jitendra carrying any weapon. Jitendra on the spur of moment had given a blow of iron rod on the head of the first informant. There was neither premeditation nor preparation. The appellant is attributed a very minor role of assaulting the informant's father with kicks and fist blows. The informant's mother has stated that, even the informant's father had

assaulted the appellant. Thus, his role can be definitely separated. He was not involved in the incident either at the inception or during the period when grievous injuries were caused to the informant. In this background, counter F.I.R. lodged by Machhindra also assumes importance. It was lodged first in point of time. Therefore, it does appear that the appellant's role can definitely be separated.

8. As far as, presumption U/s.8 of the Act is concerned, even for that purpose material is gathered during investigation can be considered. At this stage, there is sufficient reason to believe that the appellant has not committed the offence under the Atrocities Act. No abuses with reference to the caste are attributed to him. His role is very minor. He has not caused any grievous injury. There does not appear to be common intention, as far as, the appellant is concerned. He is a young boy of 21 years of age. He can be protected by an order of anticipatory bail. It is made clear that, all these observations are made only for the purpose of deciding this Appeal.

9. Hence, the order:

O R D E R

- i) The Appeal is allowed.
- ii) In the event of his arrest in connection with C.R.No.38 of 2022 registered at Trombay police station, the appellant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- iii) The Appellant shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- iv) The Appellant shall not harass the informant and his family in any manner.
- v) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)