

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

CRIMINAL APPEAL NO.53 OF 2023

Ashok Ramnath Nage,
Age-43 years, Occu:Business/Agri.,
R/o-Bokud Jalgaon, Tq-Paithan,
Dist-Aurangabad

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
At the instance of Bidkin,
Police Station, Dist-Aurangabad,
- 2) Bhausahab S/o Baburao Lokhande,
Age-42 years, Occu:Agri/Business,
R/o-Bokud Jalgaon, Tq-Paithan,
Dist-Aurangabad.

...RESPONDENTS

...
Mr. N.N. Desale Advocate h/f. Mr. A.K. Bhosle Advocate
for Appellant.
Mr. A.V. Deshmukh, A.P.P. for Respondent No.1.
Mr. S.G. Kawade Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE OF RESERVING JUDGMENT : 8th MARCH 2023

DATE OF PRONOUNCING JUDGMENT : 17th MARCH 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Admit.

2. Present Appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "the Atrocities Act") to challenge the rejection of the anticipatory bail application under Section 438 of the Code of Criminal Procedure filed by the present appellant before the learned Special Judge under the Atrocities Act, Aurangabad on 10th January 2023 in bail application No.18 of 2023. Present appellant has been posed as accused No.5 in Crime No.1 of 2023 registered with Bidkin Police Station, Taluka-Paithan, District-Aurangabad (Rural), for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2), 3(2)(va) of the Atrocities Act and under Sections 4 and 25 of the Arms Act.

3. Heard learned Advocate Mr. Desale holding for learned Advocate Mr. Bhosle for appellant, learned APP Mr. Deshmukh for respondent No.1 and learned Advocate Mr. Kawade for respondent No.2. Perused the affidavit in reply filed by respondent No.2 with the documents annexed thereto, further

affidavit of the appellant dated 2nd March 2023 and the other documents which are the copies of some posts on social media.

4. It has been submitted on behalf of the appellant that perusal of the First Information Report (for short "FIR") would show that informant's brother had contested Gram Panchayat election from the panel of one Bhausahab Subhas Tarmale. Bhausahab's mother and wife of present appellant were contesting for the post of Sarpanch. Bhausahab's mother was declared as elected. Informant then states that he had asked the present appellant to clear the outstanding bill of his hotel for the expenses which occurred during election. At that time the appellant had abused him in the name of caste by saying that:- " या चांभारड्याची झोपडी फुकून टाकील ". The elections had taken place on 18th December 2022. There was no FIR lodged by respondent No.2 – informant regarding the alleged abuses / insult in the name of the caste nor he give the details as to where he had demanded the said amount and where those abuses were given, who were the persons present at the said spot etc.

5. It has been further submitted that in the FIR thereafter the details of the incident dated 31st December 2022 have been stated which is stated to have occurred at 10.45 p.m. However,

while describing it, the informant has not stated that the present appellant was present at the spot, but then he says that when he went back to the home and asked his son Vikas what had happened, then Vikas told that around 10.30 p.m. co-accused Aniket Nage came to hotel and told him that he has been called by Pandurang Nage. When Vikas came out of the hotel, he found accused Aniket Nage, Raju Bankar, Akash Nage, Dinesh Rathod, Ashok Nage (appellant), Sunil Kharat, Pandurang Nage and all of them had assaulted him by giving abuses by kicks and fist blows. Vikas was rescued by his friend, but still the persons who had gathered, gave threat to kill and abused him in the name of caste. This shows that informant was not present at the time of alleged incident showing the appellant as party to the abuses. Therefore, it was wrong on the part of learned Judge to reject the application by saying that it is barred by Section 18 and 18-A of the Atrocities Act. That order deserves to be set aside.

6. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the Appeal and supported the reasons given by the Special Judge under the Atrocities Act. In the affidavit in reply, respondent No.2 has given further details as to under which circumstance he filed the FIR. He has filed the photographs of Bhausaheb Tarmale who

was assaulted with knife and it was with an intention to kill him. Said Bhausahab Tarmale is the District President of Nationalist Congress Party and he was hospitalized from 31st December 2022 to 14th January 2023 in Intensive Care Unit and thereafter from 15th January 2023 to 20th January 2023 in General Ward. Bhausahab is still undergoing treatment, which shows that the injuries to said Bhausahab Tarmale were life threatening. Not only this, but even today the threats are given on social media in the form of Facebook and therefore, this Court had asked the appellant to file affidavit stating that he has no connection with the people whose social media photographs have been produced. Accordingly the said affidavit has been produced, still after that affidavit also threats have been given and therefore non-cognizable offence under Section 506 of the Indian Penal Code has been registered on 19th February 2023 with same police station by Bhausahab Tarmale against one Lahu Bhimrao Nage. If appellant is released on bail, then it will lead to some other offence.

7. At the outset, we would like to say that role of each of the accused is required to be considered when he files bail application. In the nutshell the offence may be serious but it depends upon the role attributed to a particular accused. Here,

in Paragraph No.8 of the impugned order, the learned Special Judge has categorically stated that offence under the Atrocities Act is not attracted to co-accused applicant – Sunil Kharat as he himself is member of Scheduled Caste. While considering the relief sought by another accused Akash and present appellant, it is stated that they are not the members of the Scheduled Caste or Scheduled Tribe, they are residing in the same village and therefore, they have sufficient knowledge about the caste of the informant. However, it appears that the learned trial Judge failed to consider the role attributed to the present appellant. It can be seen that the Gram Panchayat elections had taken place on 18th December 2022 and informant says that during the period of campaigning he had asked the appellant to clear the outstanding bill of his hotel. That means this demand would have been prior to Gram Panchayat election as it was during campaign i.e. prior to 18th December 2022. Informant says that after such demand was made by him to the appellant, appellant has abused him in the name of caste. First of all the FIR is filed on 1st January 2023 and that delay in respect of that part of the FIR is not explained. Secondly, it is absolutely not stated where the informant had asked the appellant that he should clear the outstanding bill amount of the hotel, whether it was a place within public view

and who were the persons who heard those abuses is not stated in the FIR. Therefore, the ingredients of offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act are absolutely not attracted against the appellant in respect of that incident.

8. As regards the incident dated 31st December 2022 is concerned, informant states that around 6.30 p.m. he asked his son Vikas to manage the hotel affairs and then he went to house. Thereafter, he received phone call from one Sayaji Kolhe around 10.45 p.m. stating that Vikas was assaulted by Akash, Aniket, Ashok and Dinesh and therefore Vikas has left the hotel and fled. Informant says that he along with his wife and sister-in-law went to see Vikas in the hotel. They found Vikas coming running near Masjid. When Vikas was being asked as to what has happened, at that time one four wheeler vehicle came near them from which Akash, Aniket, Dinesh and Raju got down. Bhausaheb Tarmale, Sayaji Kolhe and Rameshwar Lokhande had gone there to settle the dispute. The informant thereafter says as to what those four persons i.e. Akash, Aniket, Dinesh and Raju had done with them. It is including the act of assaulting Bhausaheb with knife so also assault on the informant by knife by Aniket. Then informant says that those four persons had abused him in the name of the caste and then he says that when

the dispute was settled, all of them went to house. That means at the spot near the Masjid informant is not disclosing presence of present appellant.

9. The FIR further says that when informant and his family members along with Vikas came to home, they asked Vikas as to what had happened and then Vikas told them what had happened in front of hotel. At that time he says that apart from other persons appellant was present and he had assaulted Vikas with kicks and fist blows and also it is stated that those persons had abused him by saying that:- " हे चांभारडे जास्त माजले, याची ही झोपडी फुकून टाकू ". That means as regards that incident which is alleged to have been occurred with Vikas, presence of present appellant is stated and as regards abuses in the name of caste is concerned, it is stated that he had uttered those words along with other co-accused. That means it is in chorus, which is highly impossible. Abuses cannot be given in chorus as the intention of every person differs and same words cannot be uttered at one and the same time by many persons. Definitely there was political rivalry. Though the wife of present appellant appears to have lost the election, it was against the mother of Bhausahab Tarmale and why there would have been any intention to insult

informant or his family members, would be a question. Therefore, *prima facie* we do not see that the application of the appellant was barred under Section 18 or 18-A of Atrocities Act.

10. Now it is stated that something is going on in the nature of threats on the social media and it is causing fear in the mind of the informant and the witnesses. In connection with this, whatever has been produced on record cannot be so considered unless the connection of those social media posts is explained and shown to be connected to the appellant. No doubt it appears that said Bhausahab Tarmale had received severe injuries, but the appellant is not the author of those injuries nor he had taken part in the said incident which had occurred near Masjid. The learned Special Judge ought to have considered the role attributed to the appellant and ought to have allowed the application of the appellant.

11. Important point to be noted is that the investigating officer has now objected the application by saying that statement of said Bhausahab Tarmale is taken under Section 161 of the Code of Criminal Procedure and in his said statement he has stated that the present appellant had supplied the weapons to his sons Aniket and Akash and even the present appellant had used *gupti*

and therefore seizure of that *gupti* is necessary. This is surprising because informant is totally silent on the presence of present appellant, supply of any weapon to his sons and even use of *gupti*. Statement of Vikas under Section 161 of the Code of Criminal Procedure taken on 1st January 2023 would show presence of present appellant but he has not at all assigned any role to the appellant, much less assault by *gupti* on Bhausaheb Tarmale. The statement of wife of the informant taken on the next day i.e. 2nd January 2023, as she has also been posed as eye witness, would show that she is not stating that appellant was present near the Masjid where the incident causing severe injuries to Bhausaheb Tarmale had taken place. The other witnesses have conveniently said about the presence of the appellant but have not assigned any role. Statement of Bhausaheb Tarmale has been taken on 14th January 2023 and then he is assigning certain role to the present appellant. Thus, it appears that it is to settle the personal score and also there is political rivalry.

12. Under such circumstance the Appeal deserves to be allowed, however, with stringent conditions. Hence the following order:-

ORDER

(I) The Appeal stands allowed.

(II) The order passed by the learned Special Judge under the Atrocities Act, Aurangabad in Bail Application No.18 of 2023 dated 10th January 2023 stands set aside, to the extent of present appellant. The said application of the present appellant stands allowed.

(III) In the event of arrest of appellant – Ashok S/o Ramnath Nage, in connection with Crime No.1 of 2023 registered with Bidkin Police Station, District-Aurangabad (Rural), for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2), 3(2)(va) of the Scheduled Castes and Scheduled Tribes Act and under Sections 4 and 25 of the Arms Act, he be released on bail on his furnishing PR Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

(IV) The appellant shall not reside and visit the jurisdiction of village Bokud Jalgaon, Taluka-Paithan, District-Aurangabad till conclusion of the trial. Appellant should reside elsewhere, and he should give complete address of his proposed residence with his Mobile Number to the Investigating Officer.

(V) Appellant shall remain present before the Investigating Officer as and when called and co-operate with the investigation.

(VI) Appellant shall not tamper with the evidence of the prosecution in any manner.

(VII) Appellant shall not indulge in any criminal activity.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR23