

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

**10 CRIMINAL APPEAL NO.85 OF 2022
WITH APEAL/86/2022**

**SADASHIV PRATAP RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.A.R. Borulkar h/f. Mr. G.J. Pahilwan, Advocate for the petitioner.
Mr.PN. Kutti, APP for the respondent/State.
Mr.A.S. Awalgaonkar h/f. Mr. D.P. Palodkar, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 01.03.2023**

PC :-

01. Heard. These appeals are by the original accused persons in Crime No.8 of 2022 registered with Soygaon Police Station, Tal. Soygaon, Dist. Aurangabad for the offence punishable under sections 143, 147, 149, 323, 504 of the Indian Penal Code and section 135 of the Maharashtra Police Act and section 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

02. The allegation by the informant/respondent No.2 is that the informant happens to be Surpanch of village Bormal who lodged complaint with the allegation that there is dispute between the Sarpanch and

Upsarpanch appellant in Criminal Appeal No.85 of 2022. In the annual fair of the village every year Tamasha is arranged. Because of Covid in the year 2022, the informant opposed arranging of Tamasha because of Covid pandemic and this was not liked by Upsarpanch – Sadashiv. The Upsarpanch other members inspite of opposition from the Sarpanch arranged for Tamasha in the annual fair. On the date of incident i.e. on 11.01.2022, son of the informant had been to said Tamasha. When the informant went to call his son from Tamasha, it is alleged that the appellant Sadashiv abused the informant in the name of caste. He even said that if you want to see Tamash, you arrange Tamasha by calling women from your community to dance in the Tamasha and thereafter assaulted him. So far as other accused are concerned, who are appellants in Criminal Appeal No. 86 of 2022, they were present and they also abused the informant and assaulted him. The informant had been to the police station on 12.01.2022. Police gave medical memo and asked the informant to get medical check up done. Since condition was worsen the informant was taken to Ghati Hospital at Aurangabad. After initial treatment he lodged report to the police station. After lodging of the information, apprehending their arrest, the appellants approached the learned Special Judge, Aurangabad by filing application seeking bail in the event of

their arrest. The appellant in Appeal No. 85 of 2022 had filed Bail Application No. 112 of 2022 whereas other appellants in Criminal Appeal No. 86 of 2022 filed Bail Application No. 114 of 2022. Both the applications came to be rejected on the same day. Therefore, the appellants are before this Court.

03. The learned Advocate Mr. Borulkar h/f. Mr. Pahilwan for the appellants vehemently argued the matters. He submits that the entire complaint is in-fact outcome of the political rivalry between the parties. He invited attention to complaint lodged by Sadashiv with the Collector against the informant and prayed for disqualifying him for not performing duties of Sarpanch. Said case was for hearing and therefore he is falsely implicated in the offence. He further submits that looking at the allegation as it is, there are no words which can be said to be insulting words used by him while abusing in the name of caste. Merely referring someone's caste cannot be said to be offence under the Atrocities Act. He, therefore, submits that there is delay in lodging of the FIR. He submits that now charge-sheet is also filed and from the statement of witnesses, it is seen that most of the statements are of the persons who are not eye witnesses. He submits that the learned Sessions Court has failed to appreciate this material aspect.

04. So far as appellants in Criminal Appeal No. 86 of 2022 are concerned, he submits that no specific role is assigned to them. It is only general allegation that they also assaulted the informant. There is no allegation that they also abused the informant in the name of caste and prays for bail in the event of their arrest.

05. The learned APP vehemently opposed the appeals submitting that there are statements of some independent witnesses to show that Sadashiv has abused the informant in the name of caste. So far as other appellants are concerned, he submits that their presence shows that they were also party to the incident. He further submitted that there is injury certificate showing that the informant has received injury and thus prays for rejection of the appeals.

06. The learned Advocate for respondent No.2 submitted that intention on the part of Sadashiv is clear as he has abused the informant in the name of caste. Secondly, he has also told the informant to tell women from his community to come and dance in Tamasha, which clearly shows that there is insult in the name of caste.

07. Having heard the submissions and considering the FIR and the statement, it is seen that there are allegations against Sadashiv. So far as other accused are concerned, no specific allegations are seen in the FIR. This Court is therefore of the opinion that in view of bar under section 18 of the Atrocities Act case of Sadashiv cannot be considered for anticipatory bail. So far as other accused are concerned, no case is made out to attract the offence under the Atrocities Act. Hence, the following order :-

ORDER

- i) Criminal Appeal No.85 of 2022 is dismissed.
- ii) Criminal Appeal No.86 of 2022 is allowed. The order passed by learned Sessions Judge dated 25.01.2022 in Bail Applicatio No. 114 of 2022 is quashed and set aside. The appellants in Criminal Appeal No. 86 of 2022 shall be released on bail in the event of their arrest, on furnishing PR bond of Rs.15000/- (Rupees Fifteen Thousand) with one solvent surety in the like amount each. The appellants shall attend the police station as and when called by the Investigating Officer. The appellants shall not tamper with the prosecution evidence and shall not contact the witnesses.
- iii) Both the criminal appeals are disposed off accordingly.

[KISHORE C. SANT, J.]