

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

27 CRIMINAL APPEAL NO.125 OF 2023

**RAJENDRA MANOHAR SAWANT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Advocate for Appellants : Ms. Sonawane Sunita G.
APP for Respondent – State : Mr. P. M. Kulkarni
Advocate for Respondent No.2 : Mr. G. D. Jain**

CORAM : KISHORE C. SANT, J.**

DATE : 25.04.2023

PER COURT :

01. Heard the learned Advocate for the appellants, learned APP for the State and learned Advocate for respondent No.2.

02. **Admit.**

03. Appeal is taken up for final disposal by consent of the parties. By way of this appeal, the appellants are challenging the order passed by the learned Additional Sessions Judge, Shrirampur dated 12.01.2023 rejecting bail application of the applicants in the event of arrest in connection with offence registered with Shrirampur City Police Station bearing No. 0103 dtd. 18.02.2021 for the offences punishable under Section 354, 323, 504 and 506 read with Section 34 of the Indian Penal Code and later on charges are also came to be

added under Section 3(1)(r)(s) and 3(2)(v-a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (in short, Atrocities Act). Initially the F.I.R. was registered on 18.02.2020, in respect of incident dated 17.02.2021, the appellants were arrested on 19.02.2021 and immediately remanded to Magisterial Custody. All the applicants were released on regular bail on 22.02.2021. Later on, a statement came to be recorded of the informant on 04.07.2021 wherein for the first time allegations came to be recorded wherein allegations are made against the appellant stating that she abused the informant in the name of caste. In his statement the allegations under the Atrocities Act was made only in respect of Nanda. However, the statement came to be recorded of the informant on 18.08.2021 by the Dy.S.P. wherein for the first time the informant alleged that he was abused in the name of caste by remaining applicants. The appellants, therefore, approached the learned Sessions Judge. However, the application came to be rejected. The present order impugned this petition in this appeal came to be passed in fourth application filed for seeking anticipatory bail and therefore, the appellants are before this Court.

04. The learned Advocate for the appellants submits that in fact when the incident occurred and FIR came to be lodged there were no

allegations attracting the provisions of the Atrocities Act. The applicants though were initially arrested were sent to MCR and within four days they were released on regular bail. It clearly shows that their custody was not required. For the first time, the allegations attracting the provisions of Atrocities Act came to be recorded on 04.07.2021 i.e. after 5 months of the incident, the statement the allegations was made only against the appellant Nanda and not against the other accused. It is only in the statement dated 18.02.2021 that the allegations is made by the informant. It clearly shows that the statements are after thought and are only to implicate the appellants. She further submits that the appellants were arrested and when released on regular bail and no custodial interrogation is required. Now the charge-sheet is also filed long back and no purpose will be served by taking the applicants in custody as the investigation is over.

05. Learned Advocate for the respondent opposes the appeal stating that offence is against the appellants not only that the allegations are under the Atrocities Act, but also in respect of outraging the modesty and breach of peace. And therefore, the custody is required.

06. The learned APP also opposes the appeal stating that the custodial interrogation of the appellants is necessary.

07. Considering the submissions and the fact that since 22.02.2021 the appellants are on bail, there is nothing to show that the police machinery has ever tried to arrest applicants, if at all required. There is no allegation that the appellants are absconding or not available for two years. As it is now charge-sheet is also filed showing that the investigation is over, the incident is of February -2021 i.e. more than two years. It is observed that the statement attracting the offences under Atrocities Act are recorded after six months of the incident. Possibility cannot be ruled out of false implication considering the record, following order is passed :

ORDER

- (i) The appeal stands allowed.
- (ii) The order dated 12.01.2023 passed by the learned Additional Sessions Judge, Shrirampur, Dist. Ahmednagar in Special Case No. 137/2021 stands quashed and set aside.
- (iii) The appellants shall report the police station as and when called by the Investigating Officer.
- (iv) The appellants shall not tamper the evidence and shall not try to contact any of the witnesses, and shall inform contact

details to the Investigating Officer.

- (v) The learned Advocate for respondent No.2 was appointed through Legal Aid, he shall be entitled the fees as per rules.
- (vi) With this, the appeal stands disposed of.

(KISHORE C. SANT, J.)

shp/-