

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

CRIMINAL APPEAL NO. 136 OF 2023

1. Karan Manikrao Shinde
2. Akash Bharat Jagtap .. Appellants

Versus

The State of Maharashtra and another .. Respondents

Mr. Amar V. Lavte, Advocate for the Appellants.

Mr. P. M. Kulkarni, APP for Respondent No. 1.

Mr. P. P. Shahane, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 13th APRIL, 2023.

P C. :-

. At the outset, learned advocate for the appellants seeks leave to withdraw the appeal to the extent of Akash – appellant No. 2.

2. Leave is granted as prayed for.

3. Heard learned advocates for the parties.

4. This is an appeal challenging an order passed by the learned Additional Sessions Judge, Majalgaon dated 08.02.2023 thereby rejecting bail in Crime No. 31/2023 registered with Majalgaon Rural Police Station for the offences punishable under Sections 354-B, 324,

323, 504, 506 r/w Section 34 of the Indian Penal Code (for short “I.P.C.”) and under Sections 3 (1) (r), 3 (1) (s), 3 (2) (va) and 3 (1) (w) (i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short “Atrocities Act”).

5. The respondent No. 2/informant lodged information with the police in respect of the incident dated 24.01.2023. As per the information while she was at her home these appellants along with one unknown person had come to her pal (hut) and started abusing her. On asking as to why they are abusing, they assaulted with the fists and blows. The appellant No. 2 Akash with the stick assaulted the informant where her blouse was torn. The husband of the informant tried to intervene. On that all the accused persons started abusing in the name of caste and also assaulted further. They went by threatening the informant and her family members. On the basis of information, the FIR came to be registered.

6. The appellants apprehending arrest in connection with the offence filed application for bail bearing Criminal Bail Application No. 38/2023 in the Court of learned Additional Sessions Judge, Majalgaon. The learned Additional Sessions Judge rejected the application by order dated 08.02.2023 and therefore, the appellants are before this Court.

7. It is submitted by the learned advocate for the appellants that, there is no specific allegation against any of the accused persons as to which of the accused exactly abused the informant and her husband in the name of caste. It is not considerable that all the accused would utter the same words in chorus. In support of his submission, he relied upon the judgment delivered by this Court in **Criminal Appeal No. 114/2020** with connected matter dated 08.05.2020 wherein, this Court has held that, the abuses or utterances cannot be in chorus as two men or women do not think alike at the same time and had granted bail in the event of arrest. Further judgment relied upon by the learned advocate is the judgment in the case of **Kiran Madhukar Ingale Vs. The State of Maharashtra and another** reported in **2019 (3) Mh.L.J. (Cri.) 785** wherein, this Court has held that, though Section 18 of the Atrocities Act creates a bar to grant anticipatory bail in the cases under the Atrocities Act, however, it is open for the Court to do the judicial scrutiny of the application and the Court comes to the conclusion that offence is not made out under the Atrocities Act and then certainly anticipatory bail can be granted. Third judgment he relied upon in support of his submission is the judgment of the Hon'ble Apex Court in a case of **Yogesh Laxman Pandav and others Vs. State of Maharashtra, through it's Investigation Officer, Pathardi Police Station and another** reported in **2023 SCC Online Bom 229**. He submits that,

threat under Section 3 (2) (w) (i) is not made out as the offence under Section 354-B of the I.P.C. is made out since the intention to touch the body of women with sexual intent is absent. The allegation is that by stick the blouse was torn when there was assault on respondent No. 2.

8. Learned A.P.P. opposes the appeal by submitting that there are statement of other persons who have witnessed the incident. The statements clearly support the case of the informant. The certificate issued by the Rural Hospital, Majalgaon which shows that there are two injuries on the person of the informant. Both injuries are contingent (blunt). One injury is over the left eye on the upper side and other is on the back right side of upper portion. This clearly shows that though the injuries are simple, those are caused by the stick.

9. Learned advocate appointed for respondent No. 2 opposes the appeal saying that, in this case it is clear that, one lady is assaulted by three (03) persons. The gravity can be seen from the fact that, this was done in presence of her husband and mother in law. He submits that, this is only because they happened to be belonging to scheduled caste.

10. Considering the allegations and the submissions, this Court finds that, in the FIR all the allegations are substantiated. Though prima facie it is clear that, it is not specifically stated as to which of the

accused persons has abused in the name of caste, but certainly the incident of assaulting the informant has stated this and there are injuries on her body. So by prima facie though the offences under Sections 3 (1) (r) and 3 (1) (s) is not made out, however, certainly, it can be said that the offence under Section 3 (1) (w) (i) is made out against Akash- appellant No. 2 as he was having stick in his hand and he has assaulted a lady. It is for the lady to know the intention of the accused person. If she has stated that she was assaulted by the stick and when her blouse was torn, it certainly causes embarrassment in her mind. In such circumstances, intention of the accused would be a question of trial. This Court therefore finds that, though case is made out for grant of bail to Karan – appellant No. 1, no case is made out to grant of bail to Akash – appellant No. 2. In view of this, the following order is passed.

11. The criminal appeal is allowed.

12. The appellant No. 1 - Karan be released on bail in the event of arrest in connection with FIR No. 0031/2023 dated 24.01.2023 registered with Majalgaon Rural Police Station for the offences punishable under Sections 354-B, 324, 323, 504, 506 r/w Section 34 of the I.P.C. and under Sections 3 (1) (r), 3 (1) (s), 3 (2) (va) and 3 (1) (w) (i) of the Atrocities Act on furnishing P.R. bond and one solvent

surety in the amount of Rs. 15,000/- (Rs. Fifteen Thousand only).

13. The appellant No. 1- Karan shall attend the police station as and when required by the Investigating Officer. The Appellant No. 1 shall not tamper with the evidence and shall not try to contact any of the witnesses.

14. The criminal appeal is disposed off.

15. Learned advocate for respondent No. 2 is appointed through legal aid. His fees is quantified to Rs. 7,500/- (Rs. Seven Thousand Five Hundred only) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(KISHORE C. SANT, J.)

PS.B.