

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.178 OF 2023

AVINASH S/O SAHEBRAO WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr. R. V. Gore
APP for Respondent No. 1: Mr. S. N. Morampalle
Advocate for Respondent No. 2: Mr. Y. R. Neb

...

CORAM : R.M. JOSHI, J

DATE : AUGUST 03, 2023

PER COURT :

1. Appellants apprehend arrest in connection with Crime No. 41/2023 registered with Aakhada Balapur Police Station for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short '**Atrocities Act**').

2. Informant narrated incident occurred on 02.02.2023 at around 04.30 pm. It is his contention that on trifle issue present Appellants and co-accused abused and assaulted him. There is specific allegation that they abused and insulted him over his caste. It is

further contended that at that time his friend Rupesh was present at the spot.

3. Learned Counsel for the Appellants states that the allegation about abuses on caste are against co-accused and not against the present Appellant. It is further submitted that the informant made allegation against other accused of using weapon to cause assault on him whereas allegation against present Appellant is of using fist and kick blows. It is his contention that incident in question has not been witnessed by any independent person and hence, no offence is made out under the Atrocities Act.

4. Learned Counsel for the informant opposed the said contention by referring to the FIR wherein according to him there are allegations against present Appellant also for abusing and insulting informant over his caste. To support his submissions, he placed reliance on the judgment of Hon'ble Apex Court in case of Vikas Pandurang Pawar and Another Vs. State of Maharashtra and Others, (2012) 8 SCC 795.

5. Learned APP opposed the application by

referring to the statement of Rupesh, who was accompanied the informant at the time of occurrence of incident. It is submitted that considering the bar provided under Section 18 of the Atrocities Act and as *prima facie* offence is made out, present Appellant is not entitled for grant of anticipatory bail.

6. Perusal of the FIR indicates that on trifling issue the incident in question has occurred. As far as present Appellant is concerned, it is alleged against him that he had beaten informant with fist and kick blows. There is no allegation against him of using any weapon to cause assault. Thus, for the purpose of recovery of any weapon his custodial interrogation is not necessary. As far as allegation against Appellant of abusing and insulting over his caste is concerned, though there is specific allegation against co-accused Rushikesh, however, allegation against present Appellant is general in nature. The incident has occurred in agricultural field of Appellant and except friend (cousin brother as per contention of Counsel for Appellant) of informant, no one else was present there.

7. Considering the place of occurrence and

absence of any independent witness at the spot, judgment in case of Hitesh Verma Vs. State of Uttarakhand, 2020 (10) SCC 710 squarely applied to the present case. In the facts of the case, it cannot be held that an offence under the provisions of Atrocities Act is made out. Hence, bar of Section 18 does not apply.

8. In view of above, appeal stands allowed by confirming order dated 03rd March, 2023.

9. Fees of the Mr. Y. R. Neb, appointed to represent Respondent No. 2, is quantified @ Rs. 6,000/- (Rupees Six Thousand Only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(R.M. JOSHI, J.)

Malani