

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 253 OF 2023

RAJENDRA RAOSAHEB CHAVAN AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. Thombre S.S.

APP for Respondent No.1/State : Smt. D. S. Jape

Advocate for Respondent No.2 : Mr. Waghmare Pravin B.

...

CORAM : KISHORE C. SANT, J.

DATE : 12th APRIL 2023.

Per Court :

Heard the parties.

1. This is an appeal by the accused in the FIR No. 51/2023 registered at Wadodbazar Police Station, Tq. Phulambri, District Aurangabad for the offences punishable under Sections 324, 323, 504, 143, 147, 149 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, lodged at the instance of respondent no.2. At the outset, learned Advocate for the appellants

seeks leave to withdraw the appeal to the extent of appellant no.1. Leave is granted as prayed for.

2. It is alleged that on 09.03.2023 when the informant was sitting in his shop at Village Babra, Tq. Phulambri with his brother Santosh, appellant no.1/Rajendra Chavan came there and demanded back the amount of hand loan to Santosh. Santosh requested for sometime stating that he would pay the amount after his crop of cotton is sold. It is alleged that on that appellant no.1 abused Santosh in the name of caste and told him that if he does not have capacity to pay the amount, why the loan was taken. He called remaining appellants by giving call of mobile phone. The other appellants also came there and started abusing the informant and his brother Santosh in the name of caste. Thereafter again it is alleged that appellant no.1 assaulted Santosh by means of wooden log. When Santosh was lying on the ground, all other appellants assaulted him by means of fists and kicks blows. Looking at the FIR, the specific role is attributed against only appellant no.1. So far as the appellant nos. 2 to 11, no specific role is alleged. After lodging of the FIR by respondent no.2, all the appellants

approached the learned Special Judge under the SC ST (POA) Act, Aurangabad by filing bail application no.460/2023. The said application came to be rejected by the learned Special Judge, Aurangabad vide order dated 20.03.2023.

3. Learned Advocate for the appellants vehemently argued that in fact this was a dispute in two groups. The money allegedly given to Santosh, was the money out of fund collected for raising statue of Chhatrapati Shivaji Maharaj. Appellant no.1 happens to be a Chairman of Chhatrapati Shivaji Maharaj Smarak Samiti. The excess fund which is collected, is given to the persons and the informant is one of such persons to whom such amount was given and it is on that count, since he does not want to pay the money, a false complaint is lodged against him.

4. The learned APP submits that there are statements recorded of the independent persons. On going through the statements, it is seen that there are statements supporting the prosecution. There are also some statements which show that in fact it is the informant who slapped the appellant no.1 when he demanded the amount.

5. Learned Advocate for respondent no.2 vehemently opposed the appeal saying that it is a dispute between two groups, which has given rise to this incident. All these appellants have actively taken a part in the incident and each of the appellants have in fact abused the persons belonging to the SC/ST Caste in the name of caste. He submits that a case is clearly made out against the appellants and therefore they do not deserve any relief from this Court. He further submits that from reading the FIR as it is, a case is made out attracting the Sections under the Atrocities Act and in view of Section 18, the prayer for anticipatory bail cannot be considered.

6. Having heard the parties and on going through the FIR and the statements recorded by the police, this Court finds that allegations though are made in the FIR against all the appellants, however the specific allegation is only in respect of appellant no.1. So far as the appellant nos. 2 to 11, the allegations against them are general in nature and only their presence is shown at the time of incident. Therefore in absence of any specific allegation mentioned in the FIR against appellant nos. 2 to 11, it cannot be said prima-facie that they

are involved in the offence attracting the Sections under the Atrocities Act.

7. Considering the above position, this Court finds that a case is made out to grant pre-arrest bail to appellant nos. 2 to 11. Hence the following order.

ORDER

- (i) The appeal is partly allowed.
- (ii) The judgment and order dated 20.03.2023 passed by the learned Special Judge under SC ST (POA) Act, Aurangabad is quashed and set aside.
- (iii) In the event of arrest of appellant nos. 2 to 11 in connection with FIR bearing Crime No. 51/2023 registered at Wadodbazar Police Station, Tq. Phulambri, District Aurangabad for the offences punishable under Sections 324, 323, 504, 143, 147, 149 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, they shall be released on bail on executing P.R. bond of Rs.15,000/- (Rupees Fifteen Thousand) with one solvent surety in the like amount each.

- (iv) Appellant nos. 2 to 11 shall attend the concerned Police Station as and when called by the Investigating Officer.
 - (v) Appellant nos. 2 to 11 shall not tamper with the evidence and shall not try to contact any of the witnesses.
 - (vi) Parties to act upon authenticated copy of this order.
8. With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]

Najeeb.