

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

CRIMINAL APPEAL NO. 271 OF 2023

Kalim Nazeer Kureshi

.. Appellant

Versus

1. The State of Maharashtra
Through Police Inspector, Daultabad Police
Station, Tq. & Dist. Aurangabad.

2. Superintendent of Police
Aurangabad.

3. Alka Raju Jadhav

.. Respondents

Mr. Shaikh Tarek Mobin, Advocate h/f Mr. M. M. Khan, Advocate for
the Appellant.

Mr. S. P. Tiwari, APP for Respondent Nos. 1 and 2.

Mr. Rahul M. Gaikwad, Advocate for Respondent No. 3.

CORAM : KISHORE C. SANT, J.

DATED : 11th SEPTEMBER, 2023.

P C. :-

1. Heard the parties for some time.

2. Earlier appeal of the appellant was withdrawn on 03.02.2023.

This is subsequent appeal filed after filing of the charge-sheet seeking bail in the event of arrest. After filing of the charge-sheet the present appellant again approached the learned Sessions Court seeking bail in the event of arrest. However, that application also came to be rejected

and thus, this fresh appeal is placed before this Court (Coram : Kishore C. Sant, J.) as the earlier appeal was withdrawn before this Court.

3. Learned advocate for the appellant submits that, now the investigation is completed and the charge-sheet is filed. The trial is now pending. He submits that, FIR in the present case came to be filed on 02.12.2022 on the basis of statement of the informant. In the said statement, there is no allegation as regards abuses in the name of caste. It is only on 03.12.2022 in the supplementary statement, for the first time, the informant stated about the allegations that she was abused in the name of caste. The allegations are against all three accused persons without naming any specific accused as to who exactly uttered the words in the name of caste. He submits that, other statements are registered on 07.12.2022. He also invites attention of this Court to one complaint filed by one of the accused persons namely Aasma Muktar Shah which was recorded as NCR. The said complaint was against the informant in this case. The complaint was filed on 30.11.2022. He thus submits that, the present complaint is only by way of counter blast of the complaint dated 30.11.2022 and he prays for bail in the event of arrest.

4. Learned A.G.P. submits that, there are statements even of independent persons namely Sayyed Aasefa Hamid Ali and Ashok

Shejwal which clearly states that the allegations in the name of caste were made against the accused persons. He submits that there is also statement of the informant recorded under Section 164 of the Code of Criminal Procedure. In this statement also there are allegations that the informant was abused in the name of caste. He thus submits that clearly a case is made out to reject the appeal.

5. Learned advocate Mr. Gaikwad appointed for respondent No. 3 vehemently opposes the appeal and submits that when independent witnesses have also given statement before the Police, no case is made out for grant of bail in the event of arrest and prays for rejection of the appeal.

6. After hearing the parties this Court finds that, in the first statement dated 02.12.2022 the informant has not made any allegations that she was abused in the name of caste. On 03.12.2022 her supplementary statement came to be recorded in which for the first time she stated that, she was abused in the name of caste. Thus, at the time of recording of FIR there was no statement showing that the abuses were given even in the name of caste. In the statement dated 03.12.2022 the only reason assigned for not stating about the abuses in the name of caste is stated that she had forgot to mention that in her

statement. This hardly can be believed that a person filing complaint would forget this main allegation when she is insulted and abused in the name of caste. If she was insulted in the name of caste certainly there would have been statement to that effect before the Police at the first instance. There is no specific allegation as to which of the accused exactly abused the informant in the name of caste.

7. Learned advocate for the appellant relies upon the judgment in the case of Kishor s/o Chhagan Ghate and others Vs. The State of Maharashtra and others reported in 2019 All M. R. (Cri.) 5128. In that case, there were statements recorded on two occasions. In the first statement in respect of the same incident there was no allegation made about the abuses in the name of caste. In the subsequent statement there was allegation of abuses in the name of caste. Considering that, this Court was pleased to allow the appeal granting bail in the event of arrest.

8. Learned advocate further relies upon the judgment in the case of Jagdish Sajjankumar Banka Vs. The State of Maharashtra and others reported in 2023 (4) Mh.L.J. (Crl.) 155. In that case, the statements making allegations against the accused persons were closely associated with the complainant. There was delay in lodging FIR. It was also observed that the alleged incident could not be said to have taken place

in the public view. On all these counts the Court allowed the appeal. This Court finds that, this judgment is not applicable on the facts of the case. In the said judgment it is further held that the bar under Section 18 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act is not an absolute bar against grant of anticipatory bail.

9. Considering all above submissions, the facts of the case and the judgments cited above, this Court finds that, a case is made out to allow the appeal. Hence, the following order is passed.

10. The criminal appeal is allowed.

11. The impugned order dated 08.03.2023 passed by the learned Sessions Judge, Aurangabad in Criminal Bail Application No. 408/2023 is quashed and set aside. The appellant shall be released on bail in the event of arrest on furnishing solvent surety and personal bond in the sum of Rs. 15,000/- (Rs. Fifteen Thousand only) before the learned Trial Court.

12. During the pendency of the trial the appellant shall not try to contact the complainant and any of the witnesses and shall not tamper with the evidence.

13. The criminal appeal is disposed off.

14. Learned advocate for respondent No. 3 is appointed through legal aid. His fees is quantified to Rs. 25,000/- (Rs. Twenty Five Thousand only).

(KISHORE C. SANT, J.)

PS.B.