

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

CRIMINAL APPEAL NO.487 OF 2023

**MUNJAJI VITTHAL KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. P. P. Mandlik, Advocate for the appellant
Mrs. G. L. Deshpande, APP for the respondent/State
Mr. M. K. Bhosale, Advocate for respondent No. 3.

CORAM : R. M. JOSHI, J.

DATE : 24th AUGUST, 2023

P.C. :-

1. Appellant apprehends arrest in connection with Crime No. 462/2023 registered with Hatta Police Station, Dist. Hingoli for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of IPC and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Act').

2. Criminal Bail Application bearing No. 105 of 2022 filed by the appellant for pre-arrest bail came to be rejected by order dated 20/04/2023. Being aggrieved by the said order present appeal is filed under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

3. Learned counsel for the appellant submits that the incident has allegedly occurred on 16/11/2022 whereas the report is lodged on 19/11/2022. It is further argued that there are disputes between the parties over the election of Deputy Sarpanch and in absence of any specific allegations against the appellant herein the false implication can not be ruled out.

4. Learned counsel for the informant and learned APP opposed the appeal by contending that the so called enmity over the issue of the election of the Deputy Sarpanch is not attributable to the present appellant though it may be attributable to the co-accused. It is further argued that there is specific statement in the first information report that both appellant as well as co-accused came together abused him over his caste and assault was caused on him. It is the contention of the learned counsel for the informant that in view of Section 34 of the IPC both appellant as well as co-accused are responsible for the acts. Learned APP by relying upon the statement of the eye witness contends that the said incident has been witnessed by him wherein it is stated that both appellants were seen abusing the informant.

5. Perusal of the first information report indicates that the incident has allegedly occurred on 16/11/2022 whereas the report is lodged on

19/11/2022. Though there is no political rivalry attributable to the present appellant however it is so against the co-accused. As far as present appellant is concerned, there is no allegation against him that he has caused any assault on the informant. As regards the insult of the informant over the caste is concerned, the first information report indicates the informant himself claims had from behind the appellant co-accused made abuses over his caste. There is however no specific allegation that the present appellant utter the said words. The statement of the eye witness in fact though endorses the presence of the appellant and co-accused at the spot and occurrence of some incident however he does not support specifically any abuses given to the informant over his caste. Thus, it is difficult to accept on the basis of this material on record that the offence punishable under the Atrocities Act is made out against present appellant. Hence bar Section 18 of Act does not get attracted to present case.

6. Learned Add. Sessions Judge has failed take in the consideration aforesaid aspects while dismissing the application for anticipatory bail. Hence it is a fit case to cause interference in said order. Hence appeal stands allowed. Liberty of the appellant is protected in terms of interim order dated 20th June, 2023.

7. Fees of the appointed counsel is quantified Rs. 6000/- and it is to be paid by the High Court Legal Services Authority, Sub Committee, Aurangabad.

(R. M. JOSHI, J.)

ssp