

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

18 CRIMINAL APPEAL NO.551 OF 2022

**BHARAT KARBHARI ADHAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Satej S. Jadhav, Advocate for the appellant
Mr. S. B. Jadhav, Advocate for the respondent No.2 (appointed)
Mr. P. N. Kutti, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 17th MARCH, 2023

P. C.

1. At the outset learned advocate for the appellant submits that the appeal is not pressed to the extent of appellant No.1 i.e. accused No.1. The appeal to the extent of appeal No.1 therefore stands disposed off.

2. Allegations in the FIR by complainant shows that appellant Nos.2 and 3 have abused in the name of caste. However, it is not specified as to which accused have exactly uttered the word in the name of caste. Other allegations under Indian Penal code are bailable offences except sections 329 &

354.

3. Learned advocate for the appellants submits that in fact no offence is made out under the Atrocities Act. There is history behind this that on 11-03-2022 some villagers had moved the Tahasildar against respondent No.2 as the respondent No.2 and other family members had obstructed way for others by encroaching upon the road. It is alleged that road was by way of easement. The respondents and others were requested to remove the encroachment at that time they had threatened to file case under Atrocities Act. He further points out that even in July, 2022 an offence was registered against the present respondent No.2. Thus, he submits that it is on this background the offence is registered. Looking to allegations as it is he submits that it is clear that it was free fight between two groups and there is nothing to indicate that it was with a view to insult respondent No.2 in the name of caste. So far as the allegations under Sections 329 & 354 are concerned, it is against appellant No.1 against whom the appeal is already disposed off. Learned

advocate for the appellants prays for allowing the appeal.

4. Learned APP vehemently opposes the application. He submits that now the weapon involved in the offence is also recovered which clearly shows involvement and prays for rejection of the appeal.

5. Mr. Jadhav, learned advocate for respondent No.2 vehemently opposes the bail stating that Section 18 of the Atrocities Act is clearly a bar in entertaining the appeal for anticipatory bail. He submits that allegations in the complaint clearly points out that the appellants are involved in the offence under the Atrocities Act. He submits that merely because of earlier some litigation is going on between the parties, itself cannot lead to conclusion that the information is falsely lodged etc.

6. Considering the FIR and the submissions this court finds that there are no specific allegations against appellant Nos.

2 and 3. Though it is alleged that the name of caste was taken by the accused persons, however, it is not specified of which accused have exactly uttered the word in the name of caste and therefore, this court finds that no offence is made out under Section 3 (1)(s) of the Atrocities Act so far as appellant Nos. 2 and 3 are concerned. Only offences are made out under the IPC. However, from going through the FIR the offences under Section 329 and 354 of the IPC are made out against appellant No.1. This court finds that appeal to the extent of appellant Nos. 2 and 3 can be entertained. Hence, the following order:-

ORDER

a] The appeal is allowed to the extent of appellant Nos. 2 and 3.

b] The impugned judgment and order 15-07-2022 passed by the learned Additional Sessions Judge, Ahmednagar is quashed and set aside to the extent of appellant Nos. 2 and 3.

c] In the event of arrest appellant Nos. 2 and 3 be released on anticipatory bail in connection with Crime No. 0595/2022 registered at Rahuri Police Station, Dist. Ahmednagar dated 30-06-2022 for the offences punishable under Sections 354, 329, 143, 147, 148, 149, 324, 504, 506 of the Indian Penal Code and Section 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on furnishing PR bond of Rs.15,000/- each with one solvent surety in the like amount on following conditions:

- i] Appellant Nos.2 and 3 shall not tamper the prosecution evidence.
- ii] Appellant Nos.2 and 3 shall attend the concerned police station as and when called by the Investigating Officer.
- iii] Appellant Nos. 2 and 3 shall not try to contact any of the witnesses and shall not pressurize the witnesses.

d] Mr. Jadhav, learned advocate for respondent No.2 was appointed through Legal Aid. Considering this submission and seniority this court quantified his fees Rs.10,000/-.

[KISHORE C. SANT, J.]

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