

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.608 OF 2023

VISHAL BHANUDAS RAUT
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellant : Mr. S. J. Salunke

APP for Respondents: Mr. S. W. Munde

Advocate for Respondent No. 2 : Mr. S. S. Nade

...

CORAM : R.M. JOSHI, J

DATE : AUGUST 29, 2023

PER COURT :

1. Mr. C. V. Thombre, learned Counsel, states that he was appointed to represent Respondent No. 2 by way of legal aid. Respondent No. 2 has engaged advocate of his own choice. Hence, Mr. C. V. Thombre, learned Counsel, is discharged.

2. Appellant is taking exception to the order dated 26th June, 2023 passed by learned Additional Sessions Judge, Jalna in Criminal Bail Application No. 200/2023 whereby application for anticipatory bail filed by Appellant was rejected.

3. Informant Siddharth lodged report on 19.06.2023 at about 06.00 pm informing the incident

occurred on 18.06.2023 at 11.30 am. According to him he was sitting in a pickup van and with caution he opened its door. At that time, accused came on his two wheeler and gave dash to the door of the said pickup van. It is alleged that Appellant started abusing him and also insulted him over his caste. There was further allegation that Appellant assaulted him.

4. Learned Counsel for the Appellant states that Appellant and informant did not hail from same village. There is nothing on record to indicate that the informant was known to the Appellant. By referring to the medical papers on record it is argued that in fact in the said incident Appellant had sustained injuries at the hands of informant. By relying upon the judgment of Hon'ble Apex Court in case of Hitesh Verma Vs. State of Uttarakhand and Another, (2020) 10 SCC 710 it is submitted that unless there is intention of the accused to cause insult of the victim over his caste, any incident between them does not become offence under the Atrocities Act.

5. Learned Counsel for the informant submitted that there are specific allegations made in the FIR

about he being abused over the caste by the Appellant. It is his submission that Appellant and informant regularly visit the said place and hence, there is acquaintance between them though did not belong to the same village. He submitted that in view of the bar created by Section 18 of the Act Appellant is not entitled for anticipatory bail.

6. Learned APP opposed the appeal by referring to the investigation papers. According to him, injury certificate shows that the informant had sustained almost five injuries on his person and though the said injuries are simple in nature, however, coupled with the allegations and insult of informant over his caste, bar of Section 18 of the Act would apply. He also drew attention of the Court to the statement of witnesses in whose presence incident in question has occurred.

7. No doubt when an offence is made out against the accused under the provisions of Atrocities Act the bar of Section 18 thereof would attract. As far as present case is concerned, there is material on record to indicate that the Appellant has also sustained injuries in the assault at the hands of informant.

Perusal of the FIR as well as statements of witnesses do not state about any scuffle being occurred in the said incident. Thus, there is reason to believe that the incident did not take place in the manner, it is narrated in the FIR. Once such doubt is crept into the case of the informant, this Court further needs to examine as to whether it could be a case of false or over implication. It is relevant to note that there is nothing on record to indicate that Appellant and informant had previous acquaintance. Not only the first information report but also statements of witnesses do not indicate so. This assumes importance in view of the fact that both do not hail from same village.

8. In this backdrop, it becomes relevant that the incident has occurred on 18.06.2023 at about 11.40 am. Though it is accepted that the informant was also required to go the Government Hospital wherein primary treatment was given to him. There is however no explanation in the FIR as to why the said report was lodged on 19.06.2023 at around 06.00 pm. On the other hand, Appellant also immediately went to the police station and obtained memo for his examination and

treatment by Government Hospital. There is material on record to show that Appellant also sustained injuries in the incident.

9. The delay caused in lodging of the FIR and absence of any material to indicate acquaintance creates possibility of false/over implication of Appellant. Hence, there is reason to accept the submissions made by learned Counsel for Appellant that it could be a case of false implication and resultantly offence under Atrocities Act is not *prima facie* made out.

10. Having regard to these facts, this Court is of the view that since *prima facie* offence under Atrocities Act is not made out under the provisions of Atrocities Act, bar created by Section 18 does not apply. Hence, Appeal is allowed by confirming interim order dated 18th July, 2023.

(R.M. JOSHI, J.)

Malani