

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.656 OF 2023

Kakasaheb Nana Thaware

.. Appellant

Versus

The State of Maharashtra and another

.. Respondents

...

Mr. A. R. Devakate, Advocate for the appellant.

Mr. A. V. Deshmukh, Advocate for respondent No.1 – State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 25th July, 2023

ORDER :-

. Heard learned Advocate for the appellant at the interim stage.

2. The present appellant is apprehending his arrest in connection with Crime No.113 of 2023 registered with Ambi Police Station, Taluka Paranda, District Osmanabad for the offences punishable under Sections 326, 324, 323, 504, 506, 143, 147, 148 read with Section 149 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”). He has filed application i.e. Criminal Bail Application No.53 of 2023 under Section 438 of the Code of Criminal

Procedure before the learned Special Judge/Additional Sessions Judge, Paranda, Dist. Osmanabad. The said application came to be rejected on 17.07.2023. Hence, the present appeal under Section 14-A(2) of the Atrocities Act.

3. Heard learned Advocate Mr. A. R. Devakate for the appellant and learned APP Mr. A. M. Phule for the respondent No.1 – State. It is not even necessary to issue notice to respondent No.2.

4. At the outset, the appellant should show that his application under Section 438 of the Code of Criminal Procedure before the learned Special Judge was not barred under Section 18 or 18-A of the Atrocities Act. Learned Advocate for the appellant, after taking us through the contents of the FIR, submits that the presence of the appellant has been shown on the first occasion at 5.00 p.m. on 01.07.2023 stating that the appellant and one Nana Narayan Thawre were taking overhead wire from the agricultural land of the informant. He objected and then went to his house. Then he says that around 5.30 p.m., co-accused Ankush called him outside the house by abusing him in the name of caste. He then came out of the house and found that around 10 persons were standing including the present appellant. He says that all of them abused him in the name of caste and thereafter co-accused Vijay assaulted him by stick, co-accused Laxman assaulted him by stone and others assaulted him by kicks and fists. When

he started shouting, his mother, wife and son came. They were also assaulted by all the accused. Thereafter, they were separated by other villagers and were taken inside the house. After a while, when his brother came, he informed that when he was coming towards house he was also assaulted by the accused.

5. Learned Advocate for the appellant submits that in fact the appellant is a teacher in Zilla Parishad school. He was on duty on that day, but the learned Special Judge has not accepted the said certificate. The learned Judge has not considered that the abuse in the name of caste was alleged to be by co-accused and not by the appellant. The presence of appellant has been shown, but no overt act has been attributed to him and, therefore, the learned Special Judge erred in rejecting the application.

6. We have already narrated the contents of the FIR. It transpires from the FIR, which is the only document before us, that the appellant was obstructed by informant at 5.00 p.m. and, thereafter, at 5.30 p.m., it is said that he along with other accused persons went to the house of the informant. Though the alleged abuses in the name of caste cannot be given in chorus, the fact remains is that the allegations are that he was the member of unlawful assembly, who in turn the members thereof had assaulted the informant, his mother, wife and son by sticks and it is then stated that even the appellant had assaulted them with kicks and fists.

Therefore, *prima facie* offence under Sections 324, 323, 149 of Indian Penal Code and under Section 3(2)(va) of the Atrocities Act appears to be attracted and, therefore, there was bar under Section 18 and 18-A of the Atrocities Act for entertaining the application under Section 438 of the Code of Criminal Procedure. We do not find any error in respect of grasping of the facts or application of law and, therefore, no case is made out to even admit the appeal. The appeal stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm