

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

CRIMINAL REVISION APPLICATION NO.363 OF 2022

**FAIZAN ABDUL RAUF SHAIKH @ JAHAGIRDAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant : Mr. V. Z. H. Farooqui
APP for Respondent No.1: Mrs. V. N. Patil Jadhav
Advocate for respondent No.2 : Mr. Rohit P. Patwardhan h/f Mr. Pawan
P. Uttarwar

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CORAM : S. G. MEHARE, J.

DATE : 07.06.2023

ORAL ORDER :

1. Heard the learned counsel for the applicant, the learned A.P.P for the respondent No.1 State and learned counsel for respondent No.2.
2. The discharge application was moved by the applicant before the learned Special Judge (Court No.4), Ahmednagar. The learned Special Judge (Court No.4) was pleased to dismiss the application below Exh. 35 on 05.09.2022 discarding the contention of the applicant that there is material to frame the charges against him. Though in prayer clause the applicant has claimed the discharge from the offences under Sections 307, 143, 147, 148, 149 and added Section 302 of the Indian Penal Code read with Section 3 (ii)(v-a) of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, the learned counsel for the applicant would submit that, at least the applicant ought to have been discharged for the offences punishable under Section 3(ii) (v-a) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as there was absolutely no material. He has also argued that the incident happened at the public place. The applicant was not knowing the deceased. The incident happened at the spur of the moment. The provisions of Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was applied afterthought. In the absence of any material, charge cannot be framed under Section 3 (ii) (v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Earlier the Criminal Writ Petition was filed, hence respondent No.2 was joined as a party. Then it was converted into Criminal Revision Application.

3. The learned A.PP was called upon to point out the material to attract the provisions of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned counsel for respondent No.2 who is not a necessary party in the revision against the discharge application, has candidly made a

statement that there is no material to attract the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. Perused the papers placed on record. Considering the place of the incident and the way in which it happened, there appears substance in the submission of the learned counsel for the applicant that the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 can not be applied.

5. The prosecution has no evidence that the applicant was knowing the deceased before the incident as the incident happened in the queue to purchase the ticket at Bus stand. In the absence of any material, it would be inappropriate to try the applicant for the offences leveled against him under Section 3(ii)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence, the petition is liable to be partly allowed. Hence, the following order :-

ORDER

- (i) The petition is partly allowed.
- (ii) The applicant Faizan Abdul Rauf Shaikh @ Jahagirdar stands discharged from the offence punishable under Sections 3(ii)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention

of Atrocities) Act, 1989, in Crime No.I-581 of 2019, registered with Police Station Kotwali, Ahmednagar (Special Case No. 245 of 2019 State of Maharashtra Vs. Abdul Rauf Hassan and others) pending on the file of learned Special Judge (Court No.4) Ahmednagar.

(S. G. MEHARE)
JUDGE

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