

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.758 OF 2023

AMBADAS HARIHAR RATHOD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. C. C. Deshpande
(through V.C)

APP for Respondent No. 1: Mr. G. O. Wattamwar
Advocate for Respondent No. 2 : Mr. R. H. Mewara
(appointed)

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CORAM : R.M. JOSHI, J

DATE : OCTOBER 16, 2023

PER COURT :

1. Being aggrieved by the order of rejection of application for anticipatory bail present Appeal is filed by the Appellants in connection with Crime No. 417/2022 registered with Jintur Police Station for the offences punishable under Sections 341, 326, 323, 504 read with Section 34 of IPC and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Atrocities Act').

2. This is second Appeal for anticipatory bail. First appeal filed under Section 14(A) of the

Atrocities Act was rejected by this Court on 20.02.2023 in Criminal Appeal No. 859/2022.

3. First information report is lodged on 19.10.2022 in respect of incident occurred on 09.10.2022. It is alleged that incident has occurred due to tractor being run by the Appellants over the standing crop of the informant in his agricultural field. On this count dispute arose between them. It is alleged that Appellant No. 1 abused informant over his caste and there was fight between them which was intervened by the labours who were travelling in the tractor. It is further alleged that on 05.30 pm another incident occurred in which all Appellants in chorus abused informant over his caste and insulted him and there was assault on him with iron rod by the Appellant and others caused assault with stones and bricks.

4. Learned Counsel for the Appellants submits Appellant No. 1 lodged report on 17.10.2022 and present report is lodged against them is by way of counterblast. It is also submitted that there is 10 days delay in lodging of the report and it creates

possibility of false implication. It is also argued that the offence punishable under the Atrocities Act does not get attracted against the present Appellants. By drawing attention of the Court to the affidavit-in-reply filed on behalf of the investigating officer it is contended that the weapons allegedly used in the crime have already been seized and the investigating officer does not seek custody of the Appellants.

5. Learned Counsel for the informant opposed the Appeal with submissions that the Division bench of this Court while rejecting Appeal against rejection of application of anticipatory bail has held that the *prima facie* offence is made out against the Appellants and thus, Appellants cannot be enlarged on pre-arrest bail. He further submits that the allegations in the FIR indicates commission of offence under the Atrocities Act. Thus, according to him, in view of bar of Section 18 of the Atrocities Act Appeal cannot be allowed.

6. Learned APP opposed the Appeal by relying upon

the statement of Chandramuni which according to him supports the allegations made in the FIR recording insult of informant over his caste. He also drew attention of the Court to the injury certificate indicating that the informant has sustained grievous injury in the said assault.

7. This Court is not impressed by the submissions made on behalf of the Appellants that there is delay in lodging FIR in view of the fact that the informant was also admitted in the hospital for sometime. It is however material to note that the allegations made in the FIR about the insult of the informant over his caste by Appellant No. 1 is not supported by the statements of any independent witnesses. Thus, doubt is created as to whether any incident at all of abuse over the caste occurred on 10.00 am as alleged. As far as incident of same day at 05.30 pm is concerned, though statement of Chadramuni shows that the Appellants abused the informant over his caste, however, from the statement it reveals that he is the relative of informant. The said abuse cannot be said to have been made in presence of any independent witness. In view of

judgment of Hon'ble Apex Court in case of Hitesh Verma Vs. The State of Uttarakhand & Anr, 2020(10)SCC 710

such statement of friend or relative is not sufficient to attract offence under Atrocities Act. There is no statement of any other witness who has seen the occurrence of incident including the abuses hurled by the Appellant. Apart from this allegation that all of them in chorus abused informant is difficult to accept at this stage.

8. The order dated 20.02.2023 passed in Criminal Appeal No. 859/023 indicates that considering the allegations against each Appellants of assigned role of assault of use of weapons therein, the Appeal seems to have been rejected by this Court. Affidavit of investigating officer came to be filed before this Court indicating that recovery of iron rod is already made and the custodial interrogation of the Appellants is not necessary. Once this Court finds that doubt is created about causing of any offence under the provisions of Atrocities Act, the bar of Section 18 does not get attracted to the present case.

9. Appellants have no criminal history nor they are likely to flee from justice. In view of candid statement of investigating officer that the custodial interrogation of the Appellants is not necessary and that recovery of weapon is already been done, there is change in circumstances to entertain this Appeal. Having regard to aforesaid facts, it is fit case for allowing Appeal. Hence, appeal is allowed by confirming interim order dated 13.09.2023.

(R.M. JOSHI, J.)

Malani