

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.773 OF 2023

SHRIRAM GOVINDRAO PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Appellant : Mr. P. P. Mandlik
APP for Respondent Nos.1 and 2 : Mr. G. O. Watamwar
Advocate for Respondent Nos. 3 & 4: Mr. S. S. Thombre

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CORAM : R.M. JOSHI, J

DATE : OCTOBER 11, 2023

PER COURT :

1. Appellant is challenging the order of rejection of anticipatory bail by learned Additional Sessions Judge in connection with Crime No. 104 of 2023 registered with Naigaon Police Station, dist. Nanded for the offences punishable under Sections 143, 147, 148, 323, 342, 327, 427, 447, 504, 506 of Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Atrocities Act') and Sections 4, 25 of the Arms Act and Section 135 of the Maharashtra Police Act.

2. Mashnaji Murke is agricultural labour working

with sitting MLA. According to him, there are disputes between sitting MLA and his relative Shriram Pawar i.e., present Appellant over the issue of ownership of the agricultural land. It is stated that on 31.07.2023 at around 07.23 Appellant along with 4-5 unknown person came to the agricultural field i.e., Gut No. 156. Informant was guarding soyabean crop in the said field. At about 05.00 pm Appellant and other persons came and Appellant snatched mobile phone and gold ring from the informant. He also claims to have been threatened by Appellant. It is alleged that Appellant and 10-15 other persons were present there and at that time, two tractors entered the agricultural field and started sowing and thereby causing loss to standing crop of Rs. 35,000/-. It is stated that after 1/2 to 1 hour colleague of the informant came there. Appellant is said to have abused him over the caste and also has snatched his mobile phone. Allegation is made against the unknown person of causing injury to the right hand of Bhujang with stick. On the basis of these allegations, offence came to be registered against Appellant.

3. Learned Counsel for the Appellant submits that

admittedly there are disputes between the Appellant and sitting MLA over the agricultural land and a civil suit being R.C.S. no. 41/2021 is filed by the mother of the MLA against wife of the Appellant in respect of Gut No. 156. It is his further submission that in the first information report different version is given in respect of incident of abuses over the caste against the informant. It is further argued that the informant does not belong to SC and ST community and that the FIR is false and motivated. It is further submitted that Appellant is handicapped person and that there is 70% disability caused to him on account of amputation of one of leg below knee.

4. Learned Counsel for informant opposed the said submissions by stating that merely because the informant happens to be an employee of sitting MLA, it cannot be presumed that a false report has been lodged as there is previous civil dispute between the parties. It is his further submission that it is not open for this Court to consider the correctness of the allegations in the FIR about the abuses hurled against the member of SC/ST community over his caste and insult

caused to him in public view. He further submits that the contention of disability of the Appellant is not correct as he used artificial limb and there is no impediment in day to day activities conducted by him. It is his submission that the bar of Section 18 of Atrocities Act get attracted to the present case and hence, it is not a fit case for grant of anticipatory bail.

5. Learned APP opposed the Appeal by relying upon the investigation papers. In order to support his submissions, he drew attention of the Court to the statement of Bhujang who claims that he was abused over his caste by the Appellant. He also claims that the custodial interrogation of the Appellant is necessary and hence, this is not a fit case for grant of anticipatory bail.

6. First information report is lodged by agricultural labour employed by sitting MLA wherein he has categorically stated about existence of disputes between the MLA and present Appellant over the ownership of agricultural land. Though, informant has alleged that on 31.07.2023 some incident has occurred,

in the FIR at one stage he states that the Appellant has abused him over his caste fully knowing that he belongs to scheduled caste community. In this regard, learned Counsel for the informant submitted that this statement is incorrectly recorded by the police and for that reason itself anticipatory bail cannot be granted.

7. As rightly argued, there is every possibility of mistake being committed while recording FIR, but no supplementary statement of informant is recorded to correct the same. It is not case of informant that statement recorded by police was never narrated by him. Apart from this, there are material inconsistencies in the statement of the informant and victim and the same cannot be ignored. Perusal of the FIR shows that by making certain specific utterances Appellant has abused and insulted victim over his caste. Surprisingly, the victim himself gives altogether different version of the said abuses. In this regard, there is no case sought to be made out either by informant or prosecution that any error has been committed by police while recording statement of informant in this regard. Often it is complained that police do not record the

complaint/statement as per narration of maker but it is not so in the instant case.

8. Admittedly, there are disputes between the Appellant and employer of informant over the ownership of agricultural field and in this regard a suit has been filed by the mother of MLA against wife of the Appellant. Once parties are at loggerhead and at inimical terms, the Court has to be on guard while accepting allegations made by them against each other.

9. Provisions of Atrocities Act are meant for protecting the honour of members belonging to SC and ST community, however, the same cannot be permitted to be used as weapon against others. In order to attract bar of Section 18 of the Atrocities Act, the Court has to see whether *prima facie* offence is made out on the basis of complaint and there is reason to accept the contention of the informant/victim. Herein this case, *prima facie* inconsistencies appearing the statements of informant and the victim himself creates doubt about even occurrence of such incident as alleged and in particular alleged abuses hurled over caste. In the backdrop of dispute between the parties, the

possibility of false implication of Appellant exist.

10. In the facts and circumstances of the case, this Court has reason to accept arguments advanced on behalf of Appellant that no such incident could have occurred and that it is a case of false implication. In considered view of this Court a serious doubt is created about the actual occurrence of incident and hence, bar of Section 18 of Atrocities Act does not get attracted.

11. In view of above, Appeal stands allowed.
Hence, the order:

O R D E R

- (i) In the event of arrest the Appellant in connection with Crime No. 104 of 2023 registered with Naigaon Police Station, dist. Nanded for the offences punishable under Sections 143, 147, 148, 323, 342, 327, 427, 447, 504, 506 of Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Sections 4, 25 of the Arms Act and Section 135 of the Maharashtra Police Act, he shall be released on bail on furnishing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) with one surety in the like amount.
- (ii) He shall attend the concerned police station as and when required.

- (iii) He shall be treated in custody of police for the purpose of recovery, if any.
- (iv) He shall not contact the witnesses directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.
- (vi) He is further directed to cooperate the investigating agency for further investigation.

(R.M. JOSHI, J.)

Malani