

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

22 CRIMINAL APPEAL NO.860 OF 2022

NITIN BAJIRAO WAGH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Shermale K. N. a/w Sayyed Omar
Pasha Quader
APP for Respondent : Mr. Y G Gujrathi

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CORAM : KISHORE C. SANT, J.
Dated: February 06, 2023
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PER COURT :-

1. Heard learned advocate for the appellant and the learned APP for Respondent State.

2. Though respondent no.2 is represented by an Advocate, he is absent since last two dates.

3. Respondent no.2 lodged FIR with Police Station Rahuri, District Ahmednagar bearing FIR no.0876 dated 11.9.2022. Allegations in the FIR are that she is married. By birth she belongs to a Scheduled Caste but married to a person from upper caste. On 11.9.2022 when her father in law was in the cattle-shed with a servant, the accused/appellant came there and requested father-in-law of the informant to send the

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servant, who in fact happens to be his servant. On this there was some altercations and the appellant abused and beaten father-in-law with fist and blows. On hearing commotion, informant went to closed cattle shed, where it is alleged that the accused insulted the informant in the name of her caste and therefore, a complaint was lodged for the offence punishable under sections 323, 504, 506 of the IPC and sections 3(1)(r) 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SCST Act).

4. The accused approached the learned Sessions Judge by filing an application bearing Bail Petition No.1605 of 2022. The learned Additional Sessions Judge, Ahmednagar, however, by order dated 15.10.2022 rejected the application. Hence, the appeal is preferred against the said order.

5. Learned Advocate for the appellant submits that even taking the FIR as it is, no case under the SCST Act is made out. It is specific case of the informant that the incident has taken place in a closed cattle shed, which cannot be said to be a place within public view. There is no further allegations against the

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appellant. The offences punishable under sections 323, 504, 506 are bailable. He further submits that, in this case, bar under section 18 of the Act is not applicable and considering the other allegations, the appellant be released on bail in the event of his arrest.

6. Learned APP opposes the appeal saying that offence is serious since allegations are attracting section 354-A of the IPC and thus section 3(2)(va) of the SCST Act is attracted. Though the informant has married to a person belonging to upper caste, however, accused had knowledge about her caste before marriage. It is for that reason he referred to her caste and had uttered the word outraging modesty.

7. Considering the submissions and considering the FIR, it is clear that alleged incident has taken place in the closed cattle-shade and cannot be said to be a place in public view. For this reason, there would be no bar of section 18 of the Act while considering the case for anticipatory bail. Considering this, the appeal is allowed. The impugned order dated 15.10.2022 passed by the learned Additional Sessions Judge, Ahmednagar in Bail Petition No.1605 of 2022 is set aside. In

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the event of arrest of the appellant - Nitin Bajirao Wagh in connection with FIR no.0876 dated 11.9.2022 registered with Rahuri Police Station, District Ahmednagar for the offence punishable under sections 323, 504, 506 of the IPC and sections 3(1)(r) 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he shall be released on bail on executing a PR Bond and solvent surety in the sum of Rs.15,000/- (Rs. Fifteen thousand). The appellant shall attend the concerned police station as and when required by the IO. The appellant shall not leave the jurisdiction of the police station concerned without informing the police till filing of the charge-sheet. He shall not tamper with the evidence and shall not pressurize any of the witnesses. Criminal appeal stands disposed off.

(KISHORE C. SANT, J.)

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