

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

920 CRIMINAL APPEAL NO.882 OF 2022

**SOHEL YUNUS SHAIKH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Shashikant E. Shekade, Advocate for the appellants
Mrs. Karishma Sanjay Sarin, Advocate h/f Mr. N. S. Salunke,
Advocate for the respondent No.2
Mr. P. N. Kutti, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 25th JANUARY, 2023

P. C.

1. Heard the learned advocate for the parties.
2. At the outset the learned advocate for the appellants seeks leave to withdraw the appeal to the extent of appellant No.1. Leave is granted. The appeal is disposed off to the extent of appellant No.1.
3. The respondent No.2 lodged the FIR bearing Crime No. 944/2022 dated 02-11-2022 in the Tofkhana Police Station, Ahmednagar for the offences punishable under Sections 143, 147, 149, 323, 504 and 506 of the Indian Penal Code and Sections 3(1)(r)(s) of the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act in respect of the incident took place at 11.30 pm on 01-11-2022. On the same day she had lodged the FIR with the police station bearing Crime No. 940/2022 on account of boundary wall. It is alleged that present appellants getting annoyed because of FIR lodged by the informant assaulted the husband of the informant. They threatened the husband of the informant and tried to pressurize upon him to withdraw the information lodged in the morning. On listening the quarrel she went and saw that the appellants were assaulting her husband. Since she tried to intervene she was also assaulted by these appellants by kicks and fists. The accused No. 1 i.e. present appellant No.1 abused the informant in the name of caste saying that they do not have status in the society and they do not deserve even to have quarrel with the accused persons.

4. Since the offence attracted under the provision of Atrocities Act, the appellants have filed a Criminal Bail Application No. 814/2022 seeking their bail in the event of their arrest. However, the said application came to be rejected by an order below Exh. 1 dated 09-11-2022.

5. The appellants' case is that the complaint is lodged only because of rivalry on account of civil dispute. No such incident has taken place. Against these appellants there is no allegation that they abused the informant in the name of caste.

The incident has taken place at 11.30 and there was no one to witness the incident. The appellants, therefore, pray for bail in the event of their arrest.

6. Learned advocate for respondent No.2 vehemently opposed the appeal. She submits that from the reading of the FIR it is clearly seen that the offence under the Atrocities Act is made out. Threats were given on account of civil dispute by the appellants and therefore, the complaint was lodged. Getting annoyed by the complaint, the appellants have assaulted and abused the informant in the name of caste. She submits that the offence is clearly spelled out by the provision under the Atrocities Act and power under Section 438 of the Code of Criminal Procedure cannot be invoked.

7. Learned APP has also opposed the prayer of the appellants. From the police papers he submits that now even from the statement under Section 164 is recorded wherein the role of the accused is clearly seen. Statement of husband is also recorded under Section 164 of the Cr. P. C. There are independent eye witnesses who have witnessed the incident. From the police papers it is seen that there are independent persons who have stated the role of the appellants. Therefore, they do not deserve any relief from the court.

8. Considered the FIR and statements collected during

the course of the investigation as well as the statements recorded under Section 164. All the statements are against the accused persons. In so far the allegations of giving abuses in the name of caste are concerned those are against only accused No.1. There is injury certificate. However, nature of injuries is not shown. It is recorded that no external injuries have been seen.

9. Thus, considering all the above, this court deems it fit to grant relief to appellant Nos. 2 to 5. Hence, the following order:-

ORDER

a] The criminal appeal stands allowed to the extent of appellant Nos. 2 to 5.

b] The criminal appeal stands dismissed to the extent of appellant No.1 as withdrawn.

c] Appellant Nos. 2 to 5 shall be released in the event of their arrest in connection with FIR bearing Crime No.944/2022 dated 02-11-2022 registered at Tofkhana Police Station, Ahmednagar for the offences punishable under Sections 143, 147, 149, 323, 504 and 506 of the Indian Penal Code and Sections 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on

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furnishing PR bond of Rs.15,000/- each on the following conditions:

i] Appellant Nos. 2 to 5 shall attend the Tofkhana Police Station as and when called by the Investigating Officer.

ii] Appellant Nos. 2 to 5 shall co-operate with the investigation.

iii] Appellant Nos. 2 to 5 shall not try to contact the witnesses and tamper with the evidence and also shall not pressurize the witnesses.

[KISHORE C. SANT, J.]

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