

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 687 OF 2021

RAJABHAU PANDURANG PAWAR

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Appellant : Mr. Undre Vikram S

APP for Respondent No.1/State : Mr. P. N. Kutti

Advocate for Respondent No.2 : Mr. R. M. Gaikwad (Appointed)

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CORAM : KISHORE C. SANT, J.

DATE : 27th FEBRUARY 2023.

Per Court :

Heard.

1. The appellant has approached this Court seeking pre-arrest bail in the event of his arrest in connection with Crime No.0326/2021 registered with Anand Nagar Police Station, Osmanabad for the offences punishable under Sections, 323, 504 read with 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities). His application for bail is rejected by the learned Special Judge, Osmanabad by order dated 16.12.2021 bearing bail application no. 599/2021.

2. From the FIR, the allegation is seen that the informant happens to be a student of Bhosale High School in the class of 12th Science. On 30.11.2021, when he had been to the college for filling up the form of 12th examination, he went on bullet. He parked his motor-cycle and went in. Appellant asked the informant as to why he requires bullet for coming to the college and asked about the occupation of his father. The informant replied that his father is District President of R.P.I. Employees Federation. On that, appellant insulted the informant in the name of his caste and also assaulted younger brother of the informant. At that time, many people gathered out of which some were teachers. Appellant and other three persons carried the informant and his brother to the Principal's Office. In the cabin, appellant with others again beaten informant and his brother by fist and kick blows and called father of the informant. Thereafter Father of the informant took his both sons to the civil hospital for treatment. It is reported that the younger brother of the informant was taking treatment in the hospital. On the basis of which, crime was registered.

3. There is a counter complaint no. 328/2021 registered with the

same police station on 02/12/2021 by this appellant against the informant, his brother and father. Wherein it is reported that the appellant happens to be a physical trainer in the said school. He has a duty to maintain discipline in the school. At the time of incident, the informant with his brother came on bullet motor-cycle to the school to fill up 12th examination form and parked his bike right in front of gate of the school. At that time, appellant insisted him to park motorcycle side of a road. On that, informant and his younger brother started threatening him and assaulted him with iron rod. In that scuffle, they also beat the appellant by fist and kick blows. The informant took amount from the pocket of the appellant, when appellant became unconscious. Thereafter all were taken to the Principal's Office by the staff. The father of the informant was called by the Principal. Father of the informant told that he will file a case against the appellant under the atrocities act and also threatened with dire consequences. Thus there are two complaints in respect of the same incident.

4. From the charge-sheet, it is seen that some statements of other teachers are recorded, which clearly shows it is this informant who had

assaulted the appellant first. In that incident, it is the informant who threatened that he will file a case under the atrocities act. The statements are similar, one statement is of Mr. Shashikant Jadhav, who is a teacher in the same. A statement of the Principal of the college is also recorded. It clearly shows that it is the version of the appellant, which he supported. There is no statement of any independent person supporting the version of the informant.

5. The learned Advocate for the appellant submits that the appellant being a Physical Trainer in the school and he has a duty to maintain the discipline in the school. Informant was not following the discipline and parked his bullet motor-cycle right in front of the gate of the college. On that, appellant insisted the informant to park motorcycle to other side. Informant thereafter getting annoyed as in fact assaulted the teacher. Thus he submits that a case against the appellant is falsely implicated in the offences under the atrocities act. He points out the second counter complaint filed by the appellant.

6. The learned Advocate for the respondent no.2 vehemently argued

that the informant has no reason to falsely implicate his teacher. It is the teacher who unnecessarily accosted the informant and abused him in the name of caste. There are clearly allegations made against the appellant. He further submits that though the appellant has lodged the information, but it is two days after the incident and one day after the information lodged by the informant. He further submits that the learned trial Judge has rightly passed the order by refusing the bail of the appellant and prays for rejection of the appeal.

7. The learned APP opposes the appeal by submitting that there are clear allegations made in the FIR. Further he could not point out any statement of any independent person to support the case of the informant.

8. On going through the record, it is clear that the some incident had taken place in the school, where there was a fight between both the sides. It is clear that no teacher has any reason to unnecessary ask about the caste or to abuse in the name of caste to any student. It is thus in all probability, the teacher being a physical trainer teacher

certainly can ask student to maintain discipline and it is clear that the entire incident has taken place thereafter. Even Principal of the school also called the father of the informant to report about the incident.

9. Considering all these facts, this Court finds that the false implication of a teacher cannot be ruled out. This conclusion is on the basis of statement of two more teachers recorded by the police during the course of investigation. This Court finds that though the allegation appeared in the FIR, but at the same time, overwhelming material is there to show that the allegations are made falsely against the teacher. Hence the bar under Section 18 would not be applicable in this case. In view of this, Criminal Appeal is allowed. Hence, the following order is passed.

ORDER

- (i) In the event of arrest of the Appellant, he shall be released on bail in connection with FIR No.0326/2021 registered with Anand Nagar Police Station, Osmanabad on executing PR. bond and solvent surety in the sum of Rs. 15,000/- (Rs. Fifteen Thousand only).

- (ii) The appellant shall attend the concerned Police Station as and when called by the Investigating Officer.
- (iii) The appellant shall not tamper with the evidence and shall not try to contact any of the witnesses.
- (iv) Learned Advocate for respondent No.2 has appeared through Legal-aid. He is entitled to fees as per Rules.
- (v) With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]

Najeeb.