

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

**921 CRIMINAL APPEAL NO.932 OF 2022
WITH APEAL/927/2022**

**YOGESH KERBA KARADE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Ashwin Sakolkar, Advocate for the appellant in Appeal No.927/2022

Mr. Yogesh Kerbakarade, Advocate h/f Mr. Sopan G. Bobade, Advocate for the appellant in Appeal No. 932/2022

Mr. P. N. Kutti, learned APP for the respondents/State

Mr. V. P. Savant, Advocate for the respondent No.2 (appointed)

CORAM : KISHORE C. SANT, J.

DATE : 25th JANUARY, 2023

P. C.

1. Heard the learned advocate for the parties.
2. The respondent No.2 lodged the complaint with the Jalkot Police Station dated 17-11-2022 bearing Crime No. 0199/2022 for the offences punishable under Sections 143, 323, 506 of the Indian Penal Code and Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) ACt. From the allegations it is seen that the informant had appeared in the process of selection for the post of Peon in the Water Supply Department of the Grampanchayat. It is

alleged that because of this and as accused No.1 had also participated in the process, for that reason the informant was threatened by these accused persons and was asked not to go for the scrutiny of the documents etc. In the complaint there is no statement that he was abused, insulted humiliated in the name of caste. The allegation is only that he was beaten by the accused persons. Since the section 3 (1)(r) was mentioned in the FIR the appellants approached the learned Additional Sessions Judge, Udgir in Criminal Bail Application No.211/2022 seeking anticipatory bail. However, their applications came to be rejected by an order dated 01-12-2022 by the learned Additional Sessions Judge, Udgir.

3. Learned advocate for the appellant in criminal appeal No. 932/2022 vehemently argued in this case saying that looking at the FIR as it is, no ingredients of the offence under the Atrocities Act are made out. He submits that FIR was lodged on 17-11-2022. On 19-11-2022 appellant No.1 was required to lodge the FIR against the informant as he was assaulted by this respondent and he was required to be admitted in the hospital. In the incident of assault the informant in this case has even taken gold ornaments i.e. two gold rings and Rs.1 lakh which was with the person of the appellant No.1. He submits that it is only after that on 24-11-2022 informant gave supplementary statement and for the first time he alleged that he was abused in the name of caste. He submits that it is clear that only because

he lodged the complaint on 19-11-2022, the informant has given supplementary statement. Had really the applicant had been abused by him, it would have been reflected in the FIR dated 17/11/2022 itself. Further he submits that against the informant there is application given by 330 persons from the village including the present appellant that he should not be given employment without character verification. He submits that all the villagers have clearly stated that there are offences pending against the informant. Thus, even there is criminal history of the informant. He submits that therefore, complaint is lodged only to harass the appellants and prays for bail.

4. Learned advocate for the appellant in Appeal No. 932/2022 vehemently argued that both the appellants also belong to the same caste of the informant. The informant very well known the caste of these accused but still by mischief has mentioned their names in the FIR. He has invited attention to the caste certificates of the appellants which shows that they also belonging to the same caste of the informant. He submits that since the appellants also belong to same caste, there is no question of attracting the provision under the Atrocities Act and prays for bail in the event of their arrest.

5. Heard the learned Advocate for respondent No.2. He vehemently opposed the appeals. He submits that it is clear from the complaint made by the all the villagers that all the villagers

are against this informant. Thus, there is apprehension that if bail is granted to the appellants they will again give threats to the informant and prays for rejection of the appeals.

6. Learned APP opposes the appeal. He also expressed the apprehension. He submits that it is seen that the informant is from the minority group in the village. From the same village almost 350 persons have made representation against the informant. If the appellants are granted bail there would be threat to the informant.

7. Having considered the FIR, it is clearly seen that no allegations attracting provision under Section 3(1)(r) of the Atrocities Act are made out. For the first time in the supplementary statement recorded about 7-8 days this allegation is made that the informant was abused in the name of caste. This supplementary statement is recorded after the FIR was lodged by the accused No.1 on 19-11-2022. It is also clear that though the accused Nos. 2 and 3 belong to same caste of the informant still the allegations are made which further shows that offence was lodged for other offences and not under Atrocities Act. Thus, the following order:-

ORDER

a] The criminal Appeal No. 927/2022 and Criminal Appeal No. 932/2022 stand allowed.

b] The appellants in both the criminal appeals shall be released on bail in the event of their arrest in connection with Crime No. 0199/2022, registered at Jalkot Police Station, Latur for the offences punishable under Sections 143, 323, 506 of the Indian Penal Code and Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on furnishing PR bond of Rs.15,000/- each on following conditions.

i] Appellants shall attend the police station as and when called by the Investigating Officer.

ii] Appellants shall co-operate with the investigation.

iii] Appellants shall not try to contact the witnesses and tamper with the evidence and also shall nor pressurize the witnesses.

c] The advocate of the respondent No.2 is appointed through Legal Aid and he is entitled to receive the fees as per rules.

[KISHORE C. SANT, J.]