

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 986 OF 2022

BALBHIM SHARNAPPA KUMBHAR (WRONGLY MENTIONED IN THE FIR
BHIMASHANKAR SHARNAPPA KUMBAR)

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellant : Mr. Patne Santosh N.

APP for Respondent No.1/State : Smt. D. S. Jape

Advocate for Respondent No.2 : Mrs. Vaishali Kalyankar (appointed)

...

CORAM : KISHORE C. SANT, J.

DATE : 27th FEBRUARY 2023.

Per Court :

Heard.

1. This is an appeal by the appellant, seeking bail in the event of his arrest in connection with Crime No.0408/2022 registered at Naldurg Police Station, Dist. Osmanabad for the offences punishable under Sections 324, 323, 504, 506 read with 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. The allegation against the appellant is that his son always used to behave arrogantly with the informant and the members of his family. On the date of incident i.e. on 29.11.2021, this appellant abused the informant in the name of his caste and was also assaulted him by a piece of flooring tile on head. On this, the information was lodged. The appellant therefore filed bail application bearing no.641/2022 in the Court of learned Special Judge (Atrocity), Osmanabad. However, the learned Special Judge by order dated 17.12.2022 rejected the bail application. Thus, the appellant is before this Court.

3. The learned Advocate for the appellant submits that taking the allegation as it is, no offence is made out attracting the provisions of the Atrocities Act and therefore he prays that the appellant be released on bail.

4. As against that, the learned appointed Advocate for respondent no.2 argued that from reading of the FIR as it is, there is allegation against the appellant that he abused the respondent no.2 in the name of caste.

5. The learned APP also opposed the appeal stating that the sections

are rightly applied by looking to the facts of the case and there are allegations against this appellant has abused in the name of caste. She submits that even eye-witnesses are there, whose statements are recorded. Thus, the offence is seen by other persons. She further submits that there are independent witnesses and prays rejection of the appeal.

6. On going through the record, this Court finds that clearly a case is made out attracting the sections under the Atrocities Act. There are statements of eye-witnesses as are pointed out by the learned APP. Thus, in view of Section 18 of the Atrocities Act, there is a clear bar to entertain such appeal and the case cannot be considered under Section 438 of the Cr.P.C. Hence, the appeal stands dismissed and disposed of accordingly.

7. The learned Advocate for respondent No.2 has appeared through Legal-aid. She is entitled to fees as per Rules.

[KISHORE C. SANT, J.]

Najeeb.