

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.176 OF 2020

Mrutunjay Parmatma Mishra Appellant

versus

State of Maharashtra & Anr. Respondents

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- Mr. K. H. Giri a/w Dhinika Jain, Advocate for Appellant.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.
DATE : 06th JANUARY, 2023

P.C. :

1. The office note shows that the Respondent No.2 is served. Therefore I have heard this Appeal finally.

2. The Appellant has challenged the order dated 16/01/2020 passed in Anticipatory Bail Application No.48 of 2020. In effect the Appellant is seeking anticipatory bail in connection with C.R.No.259/2019 dated 18/12/2019 registered at Kherwadi police station u/s 354(A), 323, 504, 506, 509 r/w 34 of the Indian Penal Code and u/s 3(1)(s) and 3(1)(r) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act').

3. The FIR is lodged by the Respondent No.2. She has described the dispute between her family and the family of one Satyanarayan Pandey. The incident in question had taken place on 16/12/219 at about 12.30 p.m. at Bandra. It is mentioned that Satyanarayan's wife met her and started quarreling with her. She abused her and started assaulting her. It is alleged that she was accompanied by one unknown person and he slapped the Respondent No.2. There was scuffle between the Respondent No.2 and Satyanarayan's wife. During short time, Satyanarayan came there and he assaulted the Respondent No.2 and he outraged her modesty. He tore her clothes. The Respondent No.2 then called her husband. She went to hospital and then she lodged the FIR.

4. Heard Mr. K. H. Giri, learned counsel for the Appellant and Mr. S. R. Agarkar, learned APP for the State.

5. Learned counsel for Appellant submitted that the Appellant is wrongly implicated in this case. He has nothing to do with the incident or the dispute between the two parties. Apparently, the investigating agency's case is that, the unknown person mentioned in the FIR was none other than the Appellant. However, there is no basis to reach such conclusion.
6. Learned APP produced the investigation papers before me. According to him, at around the same time, there were telephone calls exchanged between the Applicant and Satyanarayan. It shows the Appellant's complicity.
7. I have considered these submissions. The investigation papers include an NC complaint lodged by the Respondent No.2 on 16/12/2019 itself with the same police station. In that complaint, she has described the incident and it is mentioned that Satyanarayan and the unknown person had come together subsequently after the quarrel had taken place between the

Respondent No.2 and Satyanarayan's wife. This description is different from the FIR wherein it is mentioned that the said unknown person was present with Satyanarayan's wife right from the inception of the offence. Apart from that, the investigation papers include statement of various witnesses namely Sayali Dharkar, Swati Dharkar, Usha Wankhede, Bhishan Gami, Pratapsingh Rathod, Anmol Kori, Mohd. Hanif Shaikh. However, none of these eyewitnesses has attributed any role to any unknown person. All of them have described the fight between the two ladies. The statement of Mohd. Hanif Shaikh and Anmol Kori show that one unknown boy was present there and was making phone calls. Besides that, no role is attributed to that unknown person. All these factors show that there is a strong possibility that the Appellant is implicated falsely. There is no sufficient material against him requiring his custody. The bar u/s 18 of the Atrocities Act does not apply because there is no material to show that the Appellant has committed any offence under the Atrocities Act.

8. Hence, the following order :

ORDER

- (i) The Appeal is allowed.
- (ii) In the event of his arrest in connection with C.R.No.259/2019 dated 18/12/2019 registered at Kherwadi police station, the Appellant is directed to be released on bail on his furnishing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.
- (iii) The Appeal stands disposed of accordingly.

(SARANG V. KOTWAL, J.)