

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.98 OF 2023

Dinesh Gopichand Patil, Age 41 years,
Occ.Service, API, R/o.Flat No.303,
3rd Floor, Officer Quarter, Roadpali,
Navi Mumbai.

Appellant

versus.

1. The State of Maharashtra
2. Vikas Raosaheb Ujagire, Age 29 years,
R/o.LIG1, Room No.43, Sector 3,
Kalamboli, Tal.Panvel, Dist.Navi Mumbai.

Respondents

Mr.Vinod Chate with Ms.Kalpana Chate, Prasad Nagarjoge i/by Chate
& Associates for Appellant.

Mr.Siddharth S. Ingle with Mr.Sahil Morey, Advocate for Respondent
no.2.

Ms.Anamika Malhotra, APP for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th July 2023

PC :

1. This is an appeal u/s.14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "Atrocities Act") challenging the order dated 25th January 2023 passed below Exhibit-4 in Criminal Bail Application No.65 of 2023 by learned Additional Sessions Judge, Panvel rejecting application for anticipatory bail preferred by Appellant in Crime No.29 of 2023 registered with Kalamboli Police Station for offences under Sections 166, 323, 324, 342, 504, 506 of Indian Penal Code and under Section 3(1)(a), 3(1)(e), 3(1)(s), 3(1)(za)(D) of Atrocities Act.

2. The Crime No.29 of 2023 was registered on 19th January 2023 alleging that complainant belongs to Scheduled Caste. On 6th

January 2023 he had visited the Chinese stall along with his friends. They had drinks. There was quarrel between friends of complainant and the waiter of the Chinese stall. It was put to an end. All of them left the place. After reaching home it was realized that bag belonging to complainant's friend Tushar Yadav was left behind at the Chinese stall. The complainant went to the spot to collect the bag. At that time the owner of Chinese stall Mr.Nilesh Bhagat and the waiter started assaulting him. They hit him by kicks and fist on abdomen. He was abused. At about 8.52 pm he gave a call on number 100 and called police. Beat Marshal reached the spot. They were informed about the incident. They informed him to visit Kalamboli Police Station. He proceeded to police station. Before he reached Kalamboli Police Station, the owner of Chinese stall and the waiter were present at the police station. The complainant informed the police that he want to lodge the complaint. His complaint was not recorded. Appellant-accused recorded complaint of Nilesh Bhagat and allowed him to leave police station. The complainant was made to sit at the police station. The complainant informed the Appellant about pain suffered by him after assault and that he should be given treatment after recording his statement. He was not allowed to visit hospital nor his complaint was recorded. Complainant again gave a call to police control room at 9.45 p.m. He again gave call to police control room at 10.00 p.m. He called for ambulance. The police pressurized him to cancel ambulance. The complainant was taken to Sub-District Hospital, at Panvel. He informed the Doctors about assault. Till the doctors advised him to take treatment, he left the hospital. He requested police to take him to M.G.M.Hospital. However, he was taken to Kalamboli Police Station. His complaint was not recorded. He was assaulted by

police. He was abused by Appellant. Appellant told him to show his Aadhar Card and after perusing the Aadhar Card from his mobile phone, he abused him on his caste. He was assaulted. The Appellant forced complainant to perform acts of humiliation and insult which are mentioned in FIR. Due to his acquaintance with DCP Dhakane, police changed their attitude. He was left at the M.G.M.Hospital. He took treatment at the hospital. He was made to sign blank paper. He was made to execute writing that he would decide about lodging the complaint after talking to his family. A case was registered against complainant u/s/186 of IPC and u/s.85(1) of Maharashtra Prohibition Act.

3. The appellant preferred application for anticipatory bail before the Court of Sessions. The said application was rejected by order dated 25th January 2023.

4. Learned advocate for Appellant submitted that FIR suffers from mala fides. The complaint is false. There is delay in lodging the complaint. The FIR was registered against complainant on 7th January 2023 u/s.85(1) of Prohibition Act and u/s.186 of IPC. The subject FIR was registered against Appellant on 19th January 2023. The version of complainant about abuses on caste is not corroborated by any independent person. Appellant is attached to Kalamboli Police Station as Assistant Police Inspector. On 6th January 2023 Appellant was on duty at Kalamboli Police Station. The informant approached the police and complained about assault. He was advised to lodge non-cognizable offence. He was forcing to lodge FIR. He started giving reference of DCP Dhakane and threatened the police that he would approach higher police authorities if the FIR is not registered on his complaint. He was under intoxication. Police was instructed to give him medical memo. Medical memo was

prepared and it was given to the informant and he was told to accompany police for medical examination. At that point of time police attached to Kamothe Police Station had visited Kalamboli Police Station accompanied by minor victim and her mother. Appellant was talking to them for taking legal recourse. The informant was sent to Sub- District Hospital, at Panvel for medical examination. Medical examination of the informant was performed. Medical officer had recorded that informant was under the influence of liquor/alcohol. Subsequently FIR was registered against him vide C.R No.4 of 2023. Statement of visitor of police station refers to the conduct of first informant. Bar u/s.18 of the Atrocities Act would not be attracted.

5. Learned APP submitted that investigation is in progress. Statements of two independent persons have been recorded, who do not refer to the abuses on caste.

6. The respondent no.2 has filed affidavit in reply opposing the relief sought in this appeal. Learned advocate for Respondent no.2 submitted that specific allegations are made in the FIR. The offence under the Atrocities Act are made out. The incident has occurred in the public place. Police refused to register FIR of the informant. Respondent no.2 was assaulted by Appellant and others. He was abused on the basis of his caste as narrated in the FIR by appellant and others. Humiliating and insulting treatment was given to complainant at Police Station. Bar u/s.18 of the Atrocities Act is attracted. The CCTV footage was received through RTI. In stead of taking action against the persons who have assaulted the complainant, an FIR has been registered against him. The respondent no.2 forwarded complaints to higher police authorities. He made calls on 100 number. The respondent no.2 was threatened by

unknown person to withdraw FIR filed by him. He had filed complaint in that regard to police and N.C complaint was registered on 2nd February 2023 for offence punishable u/s.506 of IPC. Medical reports annexed to reply supports his complaint. Reliance is placed on the judgment of this Court in the case of **Sudhir M. Vora Vs.Commissioner of Police for Greater Bombay and others**¹.

7. Appellant is Assistant Police Inspector and attached to Kalamboli Police Station. The FIR was registered on 19th January 2023. The alleged incident had occurred on 7th January 2023. The documents placed on record indicate that medical aid was given to the complainant as he had made grievance about assault. The station diary entry was recorded on 6th January 2023 at 22.45 p.m stating that first informant had complained about assault and medical memo had been provided to him for getting treatment in Sub-District Hospital, at Panvel. Medical case papers on record also indicate that first informant was under influence of liquor. The FIR was registered against him on 7th January 2023 vide C.R No.4 of 2023 at Kalamboli Police Station u/s.186 of IPC and u/s.85(1) of Prohibition Act. On completing investigation charge sheet is filed against respondent no.2 for offence u/s.85(1) of Maharashtra Prohibition Act and Section 186 of IPC. N.C complaint was lodged by respondent no.2 on 2nd February 2023, which was numbered as 137 of 2023. Learned advocate for appellant tendered report dated 15th March 2023 wherein it is mentioned that permission was sought from the Court of Judicial Magistrate First Class, Panvel to investigate the said complaint in accordance with Section 155(2) of Cr.P.C, which was granted. The investigation did not reveal that appellant or any other person at his instance were involved in threatening complainant to withdraw the present FIR. In the

1 Cri.Writ Petition No.1647/2000, decided on 16-1-2004

decision relied upon by learned Advocate for respondent no.2 there was failure of recording FIR in respect of complaint lodged by the victim although allegations were serious. The statements of witnesses were recorded at the police station who have referred to the ruckus created by complainant and that he was under influence of liquor. There is room for argument that the FIR was registered out of mala fides. The version of complainant is not supported by any other witnesses. This Court in the case of **Javed Raza Shroff Vs. The State of Maharashtra and another**², has considered several decisions of Hon'ble Supreme Court and it is observed that mala fides could be one of the grounds to over come the bar under Section 18 of Atrocities Act. Hence, implications of Section 18 of Atrocities Act should not be an impediment to grant relief sought by the Appellant in this appeal. Hence, following order.

ORDER

- (i) Criminal Appeal No.98 of 2023 is allowed and disposed off;
- (ii) Impugned order dated 25th January 2023 passed by Additional Sessions Judge, Panvel below Exhibit-4 in Criminal Bail Application No.65 of 2023 is quashed and set aside;
- (iii) In the event of arrest of Appellant in connection with C.R No.29 of 2023 registered with Kalamboli Police Station, the Appellant be released on bail on his executing PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (iv) The Appellant shall co-operate in the investigation.

(PRAKASH D. NAIK, J.)

MST

² Criminal Appeal No.1119 of 2022, decided on 20-12-2022