

Haresh Janardan Bangar and ors. .. Appellants
Versus
The State of Maharashtra and anr .. Respondents

Chetan Ananta Chaudhari and ors. .. Appellants

Versus

The State of Maharashtra and anr .. Respondents

Yogesh Arun Bangar .. Appellant

Versus

The State of Maharashtra and anr .. Respondents

CORAM: BHARATI DANGRE, J.
DATED : 21st MARCH, 2023

P.C:-

1 In the three appeals filed under Section 14 A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, nine persons are seeking protection from arrest, the relief which was declined to them by the Special Court.

 Heard the learned counsel representing the appellants in all the three appeals, and Mr. Sathe, the learned counsel appointed to represent the complainant in all the three appeals, through legal services authority, I have also heard learned APP.

2 With the able assistance of the respective counsel, I have perused the material placed before me. This include two cross FIR filed in respect of the incident, which is alleged to have taken place on 5/11/2022 at about 9:00 p.m.

 As far as CR No.149 is concerned, wherein the appellants before me are arraigned as accused, came to be filed on 9/11/2022 in 16:55 hours and the reason for delay has been offered to the effect that the complainant was admitted in the hospital as an indoor patient, as he had sustained grave injuries and as soon as he regain consciousness, he has lodged the complaint.

3 It is the narration of the complainant, that he received a phone call from his cousin brother Mayur at around 9 p.m on 5/11/2022, informing him that while he had stopped at a Chinese Food vending cart, one Nayan Vekhande entered into verbal altercation with him, and questioned him that why he was staring at him and thereafter he was informed that in presence of

the hawker, some abuses were hurled at him, which were castiest in nature. Mayur sought help and that is why, the complainant reached the spot.

In the remaining part of the complaint, it is alleged that when he reached at the spot, even his own brother Dattatraya was also present and he noticed that Nayan was accompanied with 12 to 13 persons, who were assaulting Mayur. He named 12 of these persons, and it is specifically narrated that while the brawl was going on, castiest abuses were hurled at them and the specific utterances are mentioned in the complaint.

Apart from this, it is also alleged that Amar and Nayan spit in the face of the complainant and thereafter, he along with his brother Dattatraya and Mayur came to be assaulted by fist and blows. He is alleged to have been assaulted by an iron fighter on the right side of his face and even it stated a gold chain worth Rs. 1,50,000/-, was broken and was lifted by Devidas.

4 The above narration resulted in invoking Section 392, 324, 143, 147, 148, 149, 504, 506 of IPC and Section 3(1)(k), 3(1)(s), 3(1)(r) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

The learned APP as well counsel for the complainant however concede that there are no circumstances narrated by the complainant, which could justify invocation of Section 3(1)(k) of the Atrocities Act.

5 In the entire incident, the complainant sustained

simple injuries, and when the Medico Legal report of the Sub-District hospital, Thane placed before me by learned APP is seen, it record the injury, described is 'edema' over lower lip about 2 cm. There is no other injury, but column no. 2 says pain over chest region. As far as Dattatray is concerned, it is informed that he has also sustained simple injuries along with Mayur. In any case, Amar and Nayan, who have been attributed a serious role are not before me.

6 As far as the nine appellants are concerned, when the complaint is perused, the allegations levelled are collective and lack specification as to who uttered the castiest abuses, which could have attracted section 3(1)(s) and Section 3 (1)(r) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

The complaint also fall short of making out an intention on part of all the appellants to insult or intimidate the complainant as well as Mayur, with an intention to humiliate them within public view. Necessarily, the bar imposed under section 18 has to be lifted, when no prima facie case is made out against the appellants, which would deny them a protection from arrest, on the plain reading of the complaint.

7 Worth it to mention that there is a counter FIR and there is a counter CR No. 150 of 2022 registered with the same Police Station at the instance of Amar Vekhande, one of the co-accused, which has invoked section 323, 324, 143, 147,148, 149, 504, 506 427 of IPC in respect of the very same incident and that CR is also under investigation.

8 The delay in lodging the FIR No. 149 of 2022, which is sought to be justified in the complaint by stating that since the complainant was grievously injured, a delay has occurred, which prima facie on perusal of the injury certificate do not support the explanation offered.

 In any case this, will be a matter of trial when the Special Court would look into this aspect as well as the factum of the Cross FIR being registered.

 In the wake of the aforesaid circumstances, I deem it appropriate to release the appellant in the three appeals on bail, in the event of their arrest subject to the following conditions being imposed.

ORDER

- (a) In the event of their arrest, Appellant No.1 – Yogesh Arun Bangar, in (Criminal Appeal No. 296 of 2023), Appellant No.1 - Haresh Janardan Bangar, Appellant No.2 - Mangesh Ramchandra Bangar, Appellant No.3 - Rupesh Pandurang Bhoir, Appellant No.4- Aniket Gajanan Bhoir, Appellant No.5 - Nitesh Gajanan Bhoir in (Criminal Appeal No. 295 of 2023), Appellant No.1 - Chetan Ananat Choudhari, Appellant No.2 - Alpesh Pandurang Bhoir, Appellant No.3 - Raj Mangesh Bangar in (Criminal Appel No. 112 of 2023) in connection with C.R.No. 149 of 2022 registered with Vashind Police Station, shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.

- (b) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.
- (c) The Appellants shall report to the Police Station as and when directed by the Investigating Officer.

7 At this stage, I would like to express my appreciation for the learned counsel Mr. Sathe, who was appointed, by legal aid to represent the complainant, who is present in the Court and direct the Legal Services Authority to pay the remuneration due and payable to him within a period of 6 weeks from today.

(SMT. BHARATI DANGRE, J.)