

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

CRIMINAL APPEAL NO. 420 OF 2023

Bhagwant Malinath Panchal ...Appellant
Versus
State Of Maharashtra And Anr. ...Respondents

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Miss. Pooja Phagnekar a/w Mr. Nilesh Mohite, Advocate for the Appellant.

Mr. Aniesh S. Jadhav (Appointed Advocate), a/w Rushikesh Kekane, Advocate for Respondent No.2.

Mr. Y. Y. Dabake, APP for the Respondent – State.

S.V. Sawant, API, Central Police Station.

CORAM : PRAKASH D. NAIK, J.
DATE : 5th JULY, 2023.

PER COURT:

1. The Appellant has invoked Section 14-A of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act') challenging the order dated 9th January, 2023 passed by learned Additional Sessions Judge, Kalyan rejecting the application for anticipatory bail preferred by the Appellant in connection with C.R. No.212 of 2022 registered with Central Police Station under Sections 324, 452, 504, 427 r/w 34 of Indian Penal Code (for short 'IPC) and Sections 3(1)(s), 3(1)(u) and 3(1)(v) of Atrocities Act and Sections 37(1) and 135 of Maharashtra Police Act.

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2. The First Information Report (for short 'FIR') was registered on 29th May, 2022. The brief facts of the prosecution case are that the complainant belongs to scheduled caste. He runs a shop of car accessories. In the past Accused Vikas Tomar had assaulted the informant. Due to intervention of the neighbours the FIR was not registered. However, again there was fight between both of them and Accused Vikas Tomar had lodged report against the informant. On 29th May, 2022 when the informant, his son and nephew were present in the shop, Vikas Tomar, Appellant and two other unknown persons came to the shop of informant. They were armed with wooden log and steel rod. They forcefully entered into the shop of informant and with an intention to humiliate he was abused on his caste. The Accused assaulted the informant, his son and nephew. He also caused also damage to the photo frame of Dr.Babasaheb Ambedekar displayed in the shop. Accused ran away from the spot. FIR was registered. During the course of investigation Vikas Tomar was arrested and he was released on bail. Charge-sheet has been filed against him.

3. Learned Advocate for Appellant submitted that the allegations in the FIR are vague. The alleged abuses are not specific. The role of assault is also not specific. The injuries are

not serious. The main Accused who has been attributed prime role has been arrested and granted bail. The incident of abuses on caste is not corroborated by version of any independent witness. Thus, it cannot be said that the incident had occurred within public view. Bar under Section 18 of Atrocities Act will not be attracted in this case.

4. Learned APP and learned Advocate for Respondent No.2 opposed the relief sought in this appeal. Learned APP submitted that *prima facie* case is made out against the Appellant. The Appellant alongwith the other Accused were involved in abuses on caste as well as causing damage to the shop and the articles. All of them were involved in abusing the complainant on his caste. During the course of investigation spot Panchanama was recorded which fortifies, the nature of act committed by Accused and the damage caused to the shop. Statements of eye witnesses are recorded. Statements of independent witnesses were also recorded.

5. Learned Advocate for Respondent No.2 submit that FIR need not be elaborate. The allegation in the FIR attribute role to the Appellant. The statements recorded during investigation including the statements independent witnesses and the spot Panchanama *prima facie* makes out the alleged offences. In view bar under

Section 18 of the Atrocities Act the Appellant is not entitled for anticipatory bail.

Learned Advocate has relied upon the order passed by this Court in *Criminal Appeal No.498 of 2023 dated 23rd June, 2023 in the case of Firoz Salim Shaikh V/s. State of Maharashtra And Anr.*

6. From the tenor of FIR and the documents on record it appears that the prime Accused Vikas Tomar has been arrested and granted bail. Charge-sheet is filed against him. The FIR indicate that allegations of caste abuses are of general nature attributed to all the Accused. The eye witnesses to the incident are close relatives of the first informant. The statements of two witnesses were recorded who are purportedly independent persons. However, they have not referred to alleged abuses on caste being hurled by the Accused. Those witnesses refer to the fact that damage was being caused to the shop. However, to say that the incident had occurred within public view, the version of the first informant and his relatives is not corroborated by any independent person. Considering the factual matrix of this case the bar under Section 18 of the Act would not be an impediment to grant relief sought in this appeal.

ORDER

- i. Criminal Appeal No.420 of 2023 is allowed;
- ii. Interim order dated 13th April, 2023 is confirmed.
- iii. Impugned order dated 9th January, 2023 passed by learned Additional Sessions Judge, Kalyan is set aside.
- iv. In the event of arrest, of Appellant in connection with C.R. No.212 of 2022 registered with Central Police, the Appellant be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one more sureties in the like amount;
- v. The Appellant shall appear before Investigating Officer and co-operate with the investigation on 12th, 13th and 14th July, 2023 between 11:00 to 1:00 and thereafter as and when called for.
- vi. The Appellant 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.
- vii. Appeal stands disposed off.

(PRAKASH D. NAIK, J.)