

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

CRIMINAL APPEAL NO. 407 OF 2023

Vyankat Mahadev Salgare

...Appellant

Versus

State Of Maharashtra And Anr.

...Respondents

....

Mr. Vikarant V. Phatate, Advocate for the Appellant.

Mr. Sarvjit Patil, Advocate for Respondent No.2.

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

CORAM : PRAKASH D. NAIK, J.

DATE : 18th JULY, 2023.

PER COURT:

1. The Appellant aggrieved by order dated 15th March, 2023 passed by learned Special Judge, Solapur rejecting the application for anticipatory bail preferred by the Appellant in connection with C.R. No.48 of 2023 registered with Akkalkot North Police Station for offence under Section 306 of Indian Penal Code (for short 'IPC') and Section 3(1)(s) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for Short 'SC and ST' Act) and Section 7(1)(d) Civil Liberties Act.

2. The First Information Report (for short 'FIR') was registered on 17th February, 2023 at the instance of Respondent No.2 who is the brother of deceased. The prosecution case is that the complainant and the deceased belong to schedule caste. The

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deceased had worked as labour on contract basis in the field of the Appellant from April 2022 to April 2023. He was paid an amount of Rs.30,000/- and the balance amount towards the remuneration for the work performed by the deceased was not given to him. The deceased demanded the balance amount from the Appellant. The Appellant was avoiding payment of remaining amount and was humiliating the deceased by abusing on his caste. The body of the deceased was found in the well on 22nd November, 2022. After a period of 87 days the FIR was registered.

3. Perused the documents on record and the investigation papers. It is apparent that initially ADR was recorded on the basis of information provided by the complainant indicating that the deceased was found in the well. During the course of investigation the statements of witnesses were recorded. One of the witness has stated that he found the body of the deceased floating in the well. The complainant has alleged that the deceased was demanding the remuneration for the work performed by him and he was abused on his caste by the Appellant. The version of complainant is based on whatever informed to him by the deceased. The deceased had never lodged any complaint in the past about such abuses on caste. There are no witnesses to support the prosecution case that the

Appellant had abused the deceased in their presence by humiliating him on the basis of his caste. There is inordinate delay in lodging the FIR. It is debatable whether Section 306 of IPC could be invoked in the present case. The version of complainant is not corroborated by any witness. Learned APP and learned Advocate for Respondent No.2 submitted that the averments in the FIR and the other documents on record indicate that the victim was abused on his caste. However, as stated hereinabove, the version of the witnesses is in the nature of *hearsay*. There is no eye witness to the incident of abuses on caste. In the light of the factual matrix of this case the bar under Section 18 of the Atrocities Act would not be an impediment to grant the relief sought in this appeal.

ORDER

- i. Criminal Appeal No.407 of 2023 is allowed;
- ii. Order dated 15th March, 2023 passed by Special Judge, Solapur rejecting the application for anticipatory bail is set aside.
- iii. Interim order dated 10th April, 2023 is confirmed.
- iv. In the event of arrest of the Appellant in connection with C.R. No. 48 of 2023 registered with Akkalkot North Police Station, the Appellant be released on bail on furnishing

P. R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

v. The Appellant shall co-operate with the investigation and shall appear before the Investigating Officer as and when call for.

vi. Appeal stands disposed off.

(PRAKASH D. NAIK, J.)