

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

CRIMINAL APPEAL NO. 498 OF 2023

Firoz Salim Shaikh

...Appellant

Versus

State Of Maharashtra And Anr.

...Respondents

....

Mr. Shubhankar Avhad i/by Mr. Anuj Tiwari, Advocate for the Appellant.

Ms. Dhruvi Kapadia, Advocate for Respondent No.2.

Mrs. Anamika Malhotra, APP for the Respondent – State.

PSI, D.M. Kothe, Kasara Police Station.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd JUNE, 2023.

PER COURT:

1. This is an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act'). The Appellant has challenged the order dated 2nd March, 2023 passed by learned Additional Sessions Judge, Kalyan rejecting the application for anticipatory bail. The Appellant is apprehending arrest in C.R. No. 2 of 2023 registered with Kasara Police Station under Sections 354, 504 and 506 of Indian Penal Code (for short 'IPC') and Section 3(1)(r)(s) and 3(2)(Va) of SC and ST Act.

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2. The brief facts of the prosecution case are as under :-

The complainant belongs to Adivasi tribe. Her husband had expired in 2020 due to illness. Since last six months she had been doing work of washing utensils in the hotel. Smt. Janaki Dhapte is also working in the said hotel. The Appellant used to visit the place of their work under the influence of liquor and abuse them without any reason. On 8th January, 2023 when the complainant and Janaki Dhapte were doing work at the hotel, the Appellant came there under the influence of liquor and abused them on the basis of their caste by referring to them as Adivasi Thakar and told them that if they come for work they would be disrobed and thereby outraged their modesty. The complainant informed about the incident to respected person from village and lodged the complaint on 9th January, 2023.

3. Learned Advocate of the Appellant submitted that the Appellant has been falsely implicated in this case. The First Information Report (for short 'FIR') has been registered on account of political rivalry. The complainant has stated that she had approached persons from village and then lodged FIR. Another FIR was also registered against the Appellant with the same Police Station vide C.R. No.3 of 2023. It is submitted that there is

political rivalry between the Appellant and lady namely Janaki Dhapte who is a common factor in registering both the FIRs. The incident has not occurred within public view. That reading the FIR it can be seen that the offence under the Atrocities Act is not made out. The Accused had allegedly referred to the caste of the complainant and Janaki. There is no demean intention to the community. The bar under Section 18 of the Act would not be attract.

4. Learned APP submitted that during the course of investigation statements of witnesses were recorded. The witnesses have corroborated the version of the complainant. The caste abuses are referred to by the other witnesses. The offence under the Atrocities Act is made out. The Appellant had threatened the victims that they would be disrobed in the event they attend the work on the next day. Two cases were registered against the Appellant in the past vide C.R. No. 228 of 2018 with Kasara Police Station for offences under Sections 324, 322, 504, 506 r/w 34 of IPC and C.R. No. 102 of 2020 registered with the same Police Station for offences under Sections 395, 397, 504, 506 and 427 of IPC. The villagers had submitted a representations signed by several persons to the Sub-Divisional Police Officer on 18th January,

2023 about the harassment caused by the Appellant to the villagers and the terror created by him and requested to take action against Appellant.

5. Learned Advocate for Respondent No.2 submitted that Appellant is a habitual offender. He is involved in the cases in the past. The allegations are of serious nature. Apart from abuses on caste, the Appellant had threatened the complainant that she would be disrobed. The bar under Section 18 of the Atrocities Act is attracted.

6. From the FIR it is apparent that the Appellant had hurled abuses on the basis of caste as well as threatened the victims that they would be disrobed. The version of the complainant is reiterated by other witnesses whose statements were recorded during the investigation. Thus, the statement of the complainant had been corroborated by the other witnesses. There are criminal antecedents against the Appellant. The incident had occurred within public view. In the circumstances, the bar under Section 18 of the Atrocities Act would be attracted. Taking into consideration the submission of both sides, the conduct and antecedents of the Appellant in the nature of offence committed by Appellant, no case for grant of anticipatory bail is made out.

ORDER

. Criminal Appeal No.498 of 2023 is rejected.

(PRAKASH D. NAIK, J.)