

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

CRIMINAL APPEAL NO. 594 OF 2023

Santosh Parshuram Shinde

...Appellant

Versus

The State of Maharashtra and Anr.

...Respondents

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Ms. Ilsa Shaikh i/by Mr. S.R. Phanse, Advocate for the Appellant.

Mr. Prashant Hagare, Appointed Advocate for Respondent No.2.

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

Mr. S.L.Jadhav (A.P.I.), Shahapur Police Station, Thane, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 17th JULY, 2023

PER COURT:

1. By this appeal, the appellant seeks pre-arrest bail in connection with C.R. No.231 of 2020, registered with Shahapur Police Station, Thane (Rural), for the offences punishable under Sections 353, 143, 188, 269, 500, 506 of the Indian Penal Code, under Section 51(b) of the Disaster Management Act 2005, Section 11 of Maharashtra Covid-19 Rule, 2020 and under Section 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST (Prevention of Atrocities) Act”).

2. The appellant preferred application for anticipatory bail before Sessions Court. It was rejected by order dated 25.06.2020.

3. Vide order dated 28.09.2020, interim protection was granted to appellant with direction to report investigating officer of the concerned Police Station on 05.10.2020 and 06.10.2020.

4. The FIR was registered on 28.05.2020 alleging that the complainant is working as medical Superintendent at Sub-District Hospital Shahapur from 09.08.2019. He was also working as Nodal Officer, Covid Epidemic Control, Sub District Hospital, Shahapur. He was appointed as Nodal Officer at Covid Care Centre, Jondhale College, Asangaon. He was involved in providing services to Covid Patients. On 25.05.2020 a woman named Meena Mishra was suffering from breathing problem. She was brought to hospital at 7.00 a.m. Treatment was provided to her. Due to serious health condition, she was sent to Civil Hospital, Thane. While taking treatment she passed away. On 26.05.2020, the 25 to 30 persons entered his cabin and questioned him about death of Meena Mishra. He was abused and threatened. Appellant tried to hit him with chair. He banged water bottle on table. The complainant was abused on his caste by appellant and others. The incident was video recorded and uploaded on YouTube. FIR was lodged on 28.05.2020.

5. The contention of appellant is that, allegations against the appellant are false and baseless. The incident took place on 26th May, 2020. The appellant is a senior leader of a political party in Thane Rural area and well known for his social activities. He had gone to the hospital at Shahapur, as it was learnt that Meena Mishra, wife of a health worker had expired, on account of lack of prompt treatment to her. Meena Mishra was the wife of a health worker Kamlakar Jagare, who was working in a private hospital which was treating Covid patients. While serving Kamlakar Jagare was infected with Covid-19, as a result of which his wife Meena Mishra (deceased) and their two children were kept in a quarantine centre at Jondhale College, Asangaon under the control of the respondent No.2 - Dr. Manohar V. Bansode. On 25th May, 2020 as Meena Mishra started suffering from breathlessness, her relatives contacted the doctor and Taluka Health Officer, pursuant to which, she was transferred to Sub-District Hospital at Shahapur. On reaching the said hospital, no staff was present to look after Meena Mishra and that only after half an hour one doctor arrived and assuming that she was suffering from Covid-19 prevented her from being admitted in the hospital, resulting in further deterioration of her condition. Eventually the patient was shifted to Civil Hospital, Thane and was sent in an ambulance, which was unequipped,

having only one oxygen cylinder, though the condition of the patient was critical and the distance was almost 70 kms from Shahapur. The said oxygen cylinder was not sufficient. The condition of the patient further worsened and that when they reached the Civil Hospital, Thane, the relatives of Meena Mishra were informed that the said hospital was a Covid hospital and that they could not admit her as the patient was not tested positive for Covid-19. On repeated requests of relatives and having regard to the patient's condition, the patient was admitted but unfortunately Meena Mishra expired during treatment. The respondent No.2 the Medical Superintendent of the Hospital at the relevant time, was neither present in the hospital nor was available on phone. The appellant alongwith other accused persons and few reporters had gone to seek an explanation from the respondent No.2 for negligence on his part and for his absence from the hospital. According to the appellant, the respondent No.2, confessed to the negligence and apologized for the incident. The said event was recorded on 28th May, 2020 the appellant's wife, who is a Corporator of that area filed a complaint as against respondent No.2 for negligence for the death of Meena Mishra. Only after the said complaint was filed by the appellant's wife, that the respondent No.2 as a counter blast filed the aforesaid complaint

alleging the aforesaid offences, as against the appellant.

6. Learned A.P.P. on instructions submitted that the charge-sheet has been filed against the other accused.

7. Learned Advocate for Respondent No.2/Complainant submitted that the offences are made out in the FIR. In view of bar under Section 18 of Atrocities Act, the appellants are not entitled for anticipatory bail.

8. There has been delay in lodging FIR. The wife of appellant had forwarded complaint to District Surgeon on 28.15.2020. The alleged incident had occurred on 26.05.2020. Other accused were granted anticipatory bail. Charge-sheet is filed against them. Prosecution could not point out any independent statement corroborating version of complainant. The alleged incident had occurred in cabin of complainant. The mob had gathered due to death of one of the patient. The incident of alleged abuses on caste cannot be said to have occurred at public place and within public view. Bar under Section 18 of Atrocities Act would not be impediment to grant relief to appellant.

ORDER

- i. Criminal Appeal No.594 of 2023 is allowed and disposed of;

- ii. Interim order dated 28.09.2020 is confirmed;
- iii. The order dated 25.06.2020 passed by learned Additional Sessions Judge, Kalyan below Exhibit-3 in Anticipatory Bail Application No.654 of 2020 is set-aside;
- iv. In the event of arrest of the Appellant in connection with C.R. No. 231 of 2020 registered with Shahapur Police Station, Dist. Thane (Rural) the Appellant be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(PRAKASH D. NAIK, J.)