

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

CRIMINAL APPEAL NO. 499 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 1st February, 2023 passed by learned Additional Sessions Judge, Kalyan rejecting the application for anticipatory bail.

2. The Appellant is apprehending arrest in C.R. No.3 of 2023 registered with Kasara Police Station under Section 324 of Indian Penal Code. Subsequently, Sections 3(1)(k)(s)(r) and 3(2)(Va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act were added.

SUNNY
ANKUSHRAO
THOTE

Digitally signed
by SUNNY
ANKUSHRAO
THOTE
Date: 2023.06.27
14:16:24 +0530

3. The case of the prosecution is that on 8th January, 2022 at about 6:30 p.m. the informant came to know from the neighbours that his son Chagan was brutally assaulted in his chicken shop by Appellant. The informant reached the spot and noticed that his son was lying unconscious. He came to know from Janaki Dhapte that the Appellant visited the shop of complainant's son under influence of liquor and assaulted him by giving blows of brick on his head, back, stomach and chest. The injured was taken to hospital for treatment. Subsequently, statement of the injured (son of first informant) was recorded, wherein he referred to assault by Appellant and abuses by him on the basis of his caste.

4. Learned Advocate for 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. Another FIR was registered against the Appellant with the same Police Station vide C.R. No.2 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 statement of injured was recorded subsequently and his version of abuses on caste is not supported by any other independent person. The incident has not occurred within public

view. The offence under Section 324 of IPC is bailable. Reliance is placed on order passed by this Court dated 14th December, 2012 in Anticipatory Bail Application No. 1207 of 2012.

5. Learned APP and learned Advocate for Respondent No.2 submitted that the Appellant is a habitual offender. The statement of son of complainant refers to abuses on caste. The Appellant creating trouble in the village. Statements of witnesses were recorded. There are criminal antecedents against Appellant. C.R. No.228 of 2018 has been registered with Kasara Police Station and C.R. No.102 of 2020 is also registered with same Police Station. Representation is submitted by villagers to SDPO on 18th January, 2023 for taking action against Appellant.

6. It is apparent that the FIR was registered primarily under Section 324 of IPC and under the provision of Atrocities Act. The first informant is not the eye witness to the incident. He came to the spot after learning about the fact that his son was assaulted. Thereafter, the statement of complainant's son (Injured) was recorded. He has referred to the abuses hurled by Appellant on caste. However, there is no corroboration to the allegation of caste abuse by independent witness. Thus the said incident has not occurred within public view. The bar under Section 18 of the

Atrocities Act would not be attracted.

ORDER

- i. Criminal Appeal No.499 of 2023 is allowed;
- ii. Order dated 1st February, 2023 is set aside.
- iii. In the event of arrest of the Appellant in connection with C.R. No. 3 of 2023 registered with Kasara Police Station, the Appellant be released on bail on furnishing P. R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- iv. Appeal stands disposed off.

(PRAKASH D. NAIK, J.)