

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

CRIMINAL APPEAL NO.95 OF 2021

Prafull Dattaram Surve	 Appellant
Versus	
The State of Maharashtra & Anr.	 Respondents

**.....
WITH
INTERIM APPLICATION NO.1370 OF 2021
IN
CRIMINAL APPEAL NO.95 OF 2021**

Mr. Satyavrat Joshi, Advocate for the Appellant.
Mr. S.R. Agarkar, APP for the Respondent No.1-State.
Dr.Suresh Mane, Advocate for the Respondent No.2 in
Appeal and for the applicant in Interim Application.

CORAM : SARANG V. KOTWAL, J.

DATE : 21st FEBRUARY, 2023

P.C. :

1. The appellant has challenged the order dated 28.1.2021 passed by the Adhoc Additional Sessions Judge-1, Panvel-Raigad in Bail Application No.41/2021. In effect, the appellant is seeking anticipatory bail in connection with C.R.

No.187/2020 registered at Nhava Sheva police station, Navi Mumbai on 2.12.2020 under Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'Atrocities Act').

2. Heard Shri Satyavrat Joshi, learned counsel for the appellant, Shri S.R. Agarkar, learned APP for the respondent No.1-State and Dr.Suresh Mane, learned counsel for the respondent No.2.

3. The FIR is lodged by the respondent No.2. It is registered on 2.12.2020. He has stated that he was working with M/s. A.V. Global Corporation Private Limited since about 13 years at the post of Senior Executive. Since about three years prior to lodging of the FIR, he was working at the Uran Branch. The appellant was the Manager of that Branch. Since 8.6.2020, the respondent No.2 was suffering from fever and, therefore, he did not attend his work. He took treatment from the doctor and ultimately it was detected that he was suffering from COVID. He was admitted to a hospital and then he was discharged on

25.6.2020. In between, he had informed the Branch Manager Shri Vinay Pathak about his illness. On 30.7.2020, he informed Shri Pathak that he would start attending to his duties, but, he was told by Shri Pathak that till he received orders from the appellant, he should not resume his duties. In spite of that, on 3.8.2020, he attended his office and worked for the entire day. The appellant told him that he should not attend the office from the next day and that he would be called whenever necessary. He was given option to work in the Andheri (East) Branch. Since because of lock-down there was no public transport available, it was convenient for the respondent No.2 to work at Uran but the appellant did not accept his request. On 21.8.2020 at about 3.00 p.m., the respondent No.2 and his co-employee Abhay Khatu went to Uran Branch. He was waiting for the appellant outside the office. He saw the appellant near the parking place. The respondent No.2 went there and requested him that he should not be sent to Andheri Branch. The appellant started abusing him. He abused with reference

to his caste. He threatened to remove him from his job. It is the case of the respondent No.2 that the appellant used to humiliate him often. On this basis, the FIR is lodged.

4. Learned counsel for the appellant submitted that it is a false FIR and it arises out of the disciplinary action which was proposed to be taken against the respondent No.2. He relied on the emails and show-cause notices issued to the respondent No.2 and the aforementioned Abhay Khatu. The show-cause notices were issued on 11.8.2020 to the respondent No.2 as well as to Mr. Abhay Khatu. Both of them had responded to these show-cause memos. As a counter blast, this particular FIR was lodged against the appellant. He submitted that there is delay in registering the FIR.

5. Learned APP produced the investigation papers before me, which included the statements of Mr. Abhay Khatu and one Santosh Phalke. According to them, they were present at the time of incident and had seen the incident and had heard the abuses.

6. Learned counsel for the respondent No.2 submitted that all the ingredients of Section 3(1)(r) of the Atrocities Act are made out and since two witnesses have heard the abusive words, the offence is made out. He further submitted that the order passed by the Adhoc Additional Sessions Judge, Panvel was proper.

7. I have considered all these submissions. There does appear to be background of dispute between the parties. The respondent No.2 and his companion Mr. Khatu were sent show-cause notices to which they had responded. They had a reason to be unhappy with the appellant. The alleged incident had taken place on 21.8.2020 and the FIR is lodged on 2.12.2020.

8. Shri Mane submitted that the respondent No.2 had immediately given a written grievance to the Senior Inspector of Police, Nhava Sheva police station on 21.8.2020 itself. However, there no explanation offered by the investigating agency as to why the FIR was not lodged immediately.

9. Out of the two witnesses pointed out by Shri Agarkar, one witness Mr. Khatu was having the same grievance against the appellant as was entertained by the respondent No.2. Santosh was the other witness. But significantly their statements for the first time were recorded on 10.12.2020. Before that there is nothing to show that these two witnesses had approached any authorities or had made any grievance about the incident.

10. Therefore, taking into account all these factors, the appellant has made out a case for grant of relief of the order in the nature of anticipatory bail. And, therefore, I am inclined to allow this appeal. However, it is made clear that all these observations are restricted to passing of this order and the trial Judge shall not be influenced by any of the observations made in this order while deciding the trial.

11. Hence, the following order :

:: O R D E R ::

- i. The appeal is allowed.
- ii. In the event of his arrest in connection with C.R.

No.187/2020 registered at Nhava Sheva police station, Navi Mumbai the appellant is directed to be released on bail on his executing P.R. bond in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.

- iii. The Appeal along with Interim Application are disposed of accordingly.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2023.02.23
10:40:46 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)