

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.785 OF 2023

Sagar Chintaman Niljekar

Appellant

versus

The State of Maharashtra and others

Respondents

Mr.Rishi Bhuta with Ms.Ankita Bamboli, Mr.Prateek Dutta, Ms.Saakshi Jha and Omer Farook i/by Mr.Ashish Dubey, Advocate for Appellants.

Mr.Anil S. Kamble i/by Jay Gaikwad, Advocate for Respondent no.2.
Mr.Y.M.Nakhwa, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th July 2023

PC :

1. This is an appeal u/s.14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Atrocities Act'). Appellant is aggrieved by order dated 11th July 2023 passed by Sessions Court rejecting application for anticipatory bail.

2. Appellant is apprehending arrest in C.R No.220 of 2022 registered with Khadakpada Police Station, Kalyan for offences under Sections u/s.143, 147, 149, 323, 504, 506 of Indian Penal Code and u/s.3(1)(d), 3(1)(e), 3(1)(r), 3(1)(s) of Atrocities Act. Subsequently Section 3(1)(4), 3(2)(va) of Atrocities Act, Section 67(B) of I.T.Act and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015, were invoked.

3. The case of prosecution is that on 18th May 2022 the complainant returned home and opened his Instagram account. He noticed some videos relating to Buddha Pournima celebrated at Karlagadh and Aai Ekvira festival. He noticed some objectionable

messages by some users under the videos and posted a message to delete the objectionable message. However, the user denied to delete the message on Instagram and there was exchange of abusive words. On 19th May 2022 the user intimated to the informant on Instagram account that the persons who posted objectionable comments in respect of Goddess Ekvira should apologize, record video to that effect and post on Instagram. It was also intimated that complainant should share his residential address. However, he did not reply to the message. On 19th May 2022 4 to 5 persons visited the work place of informant and identified him. Thereafter about 20 to 25 persons gathered there and asked him to come out of the shop and pressurized him to apologize and recorded video of the scene. Some persons called the informant to come to Atali Vadavali area. He was assaulted. The complainant was taken to temple situated at Barave Village and asked him to beg for apology before Goddess by rubbing his nose before the deity. The sister of informant came to the spot. Subsequently the FIR was registered.

4. Appellant had moved an application for anticipatory bail before Sessions Court which has been rejected.

5. Learned advocate for Appellant submitted that complainant had referred to several persons involved in the commission of offence without attributing any overt act to the Appellant. The offences under IPC are bailable in nature. There is no material to substantiate the charges under Atrocities Act. The FIR is silent about case of complainant. The FIR is silent in respect of the fact whether accused were aware that complainant belongs to Scheduled Caste. The complaint is vague. Custodial interrogation of appellant is not necessary. About nine persons were arrested in this case. No specific overt act is attributed to the Appellant. Caste of complainant is not

reflected in FIR.

6. Learned advocate for appellant has relied upon following decisions :-

(i) Kedarsingh Dharma Patil & anr. Vs. The State of Maharashtra and another – 2019-ALL MR (Cri)-2974;

(ii) Jyostana d/o Ashok Patil Vs. The State of Maharashtra and others – 2019-ALL MR (Cri)-3215;

(iii) Kiran s/o Madhukar Ingle Vs. The State of Maharashtra and another – Criminal Appeal No.787 of 2018, dated 26-2-2019;

(iv) Jagdish Sajjankumar Banka Vs. The State of Maharashtra and another – Criminal Appeal Nos.1258/2022 and 1259/2022, decided on 10th March 2023.

7. Learned APP and learned counsel for Respondent no.2 opposed grant of any relief to the Appellant. Learned APP submitted that offence is of serious nature. The victim was minor aged about 17 years. Appellant has played vital role in crime. The victim was made to seek apology and video thereof was made and posted. Thereafter he was made to walk with undergarment on his person. He was made to rub his nose at Village Baravi among many persons. Video was recorded of the whole scene. Apart from the FIR and supplementary statement, statements of various other witnesses were recorded. The material gathered supports the charges. Section 3(1)(d) and 3(1)(e) are applicable in the case. Accused were aware that complainant belongs to Scheduled Caste.

8. Learned counsel for respondent no.2 reiterated the submissions of learned APP. It is submitted that during the course of investigation video of the incident has been recorded. The incident is recorded in the video. Considering the nature of allegations which are supported by witnesses, the provisions of Atrocities Act are

squarely applicable. In view of bar u/s.18 of Atrocities Act, Appellant is not entitled for anticipatory bail.

9. Perused investigation papers. Investigation is still in progress. On account of the incident as stated hereinabove, the mob of several persons had apparently approached the complainant and he was taken to temple. The photographs on record indicate that his clothes were removed and he was on undergarment. The FIR, supplementary statement and statements of witnesses supports the penal provisions which are invoked against accused. Learned APP has submitted that caste certificate of complainant has been collected. It shows that he belongs to Scheduled Caste. From the FIR and role played by Appellant it is evident that he has played vital role in the crime. The material on record indicate that accused were aware of caste of complainant. Advocate for Appellant has relied upon several decisions. There is material to indicate that victim belongs to Scheduled Caste and opponents had knowledge that he belonged to Scheduled Caste. Hon'ble Supreme Court in the case of **Ashabai Machindra Adhagale Vs. State of Maharashtra** (AIR-2009-SC-1973) has observed that FIR is not an encyclopedia. After ascertaining the facts it is open to Investigating Officer to record that the accused belongs to or does not belong to Scheduled Caste. The offences under IPC and Atrocities Act are made out in this case. In view of bar u/s.18-A of Atrocities Act, Appellant is not entitled for anticipatory bail.

10. Considering the aforesaid circumstances, no case is made out for grant of any relief in this appeal. Criminal Appeal is rejected.

(PRAKASH D. NAIK, J.)