

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 812 OF 2023**

Moshin Shaikh ...Appellant
Versus
The State of Maharashtra and Anr. ...Respondents

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Mr. Ganesh Gupta, Advocate for the Appellant.
Mr. Shailesh Kharat, Advocate for the Respondent No.2.
Ms. Pallavi N. Dabholkar, APP for the Respondent – State.
Mr. Sanjay Patil, PSI, Khopoli Police Station, Present in Person.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th JULY, 2023.

P.C.

1. This is an appeal under Section 14-A of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act'). The Appellant has challenged the Order dated 17th July, 2023 passed by learned Additional Sessions Judge, Panvel-Raigad rejecting the Application for anticipatory bail.

2. The Appellant is apprehending arrest in First Information Report No.209 of 2023 (for short 'FIR'), registered with Khopoli Police Station on 16th June, 2023 for offences under Sections 3(1)(r), 3(1)(s) of Atrocities Act and Sections 323 and 504 of Indian Penal Code (for short 'IPC').

3. The case of the prosecution as evident from the FIR lodged by Respondent No.2 is that the first informant belongs to Scheduled

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Caste. The husband of first informant was earlier working at Khopoli Bus Stand as a cleaner. Presently, he is working at different places. On 16 June, 2023 the Accused was digging pits in the property owned by him with the help of his workers. Since the work conducted by the Accused was creating hurdle in cleaning public toilet. The first informant questioned the Accused about the work performed by him and told him that it would create trouble to everyone. He was advised to leave some space. Although the first informant interacted with the Accused in good faith, he took it otherwise and abused her on the basis of her caste in the presence of other persons. The Accused pushed the first informant and quarrelled with her. The persons who were present at the spot intervened. The first informant approached the Police and lodged the complaint.

4. The Appellant preferred an application for anticipatory bail before the Court of learned Additional Sessions Judge, Panvel-Raigad. The application was rejected vide Order dated 17th July, 2023.

5. Learned Advocate for the Appellant submitted that the FIR is false. Offences invoked in the FIR are not made out bar under Section 18 of the Atrocities Act would not be attracted. To constitute

the offence under Section 3 of the Atrocities Act, there must be intentional insult or intimidation with intent to humiliate a member of Scheduled Caste and Scheduled Tribes in any place within public view. The first informant has encroached on the land of Appellant. There is civil dispute between the parties. The Appellant has registered the FIR No.211 of 2023 against some persons who are related to incident. As a counter blast to that FIR, the impugned FIR was registered against the Appellant. The Appellant had obtained all the permissions for developing his property.

6. Learned APP submitted that offences under the Atrocities Act are *prima facie* made out. In view of bar under Section 18 of the Act, the Application under Section 438 of Cr.P.C. is not maintainable. The complainant belongs to Scheduled Caste. She was abused at public place and within public view. Incident had occurred in the presence of witnesses. C.R. No.155 of 2018 was registered with Khopoli Police Station against the Appellant for offences under Sections 452, 324, 143, 147, 148, 149, 506 and 427 of IPC case is pending. C.R. No.210 of 2023 was registered with Khopoli Police Station for offences under Sections 160, 326 and 504 of IPC. C.R. No.1 of 2012 was registered with same Police Station, for offences under Sections 143, 148, 149, 325, 324, 323, 504 and 506 of IPC.

The case has resulted in acquittal.

7. Learned Advocate for Respondent No.2 submitted that FIR makes out offences against the Accused. The Appellant is not entitled for relief under Section 438 of Cr.P.C. The version of complainant is supported by witnesses. The abuses were made within public view. The Application for anticipatory bail has been rejected by the Sessions Court by giving cogent reasons. Custodial interrogation of the Appellant is necessary.

8. The alleged incident had occurred on 16th June, 2023 at about 10:30 a.m. FIR was registered on the same day at about 7:50 p.m. From the tenor of FIR, it is evident that the incident had occurred on account of the work performed by the Accused through his workers on the plot owned by him, which according to the first informant creating hurdle in the process of cleaning public toilet. The persons who are shown to be present at the scene of offence were associates of the complainant. It appears from the documents on record that the work was conducted at the plot of land at the instance of of the Appellant on obtaining requisite permissions. The Appellant had forwarded complaint to Khopoli Municipal Council on 3rd April, 2023 alleging that one Nana Bapu Solanki had unauthorizedly constructed shade by encroaching upon the land. The

first informant is the wife of Nana Solanki. The Appellant had also made complaint to Assistant Engineer, Khopoli about granting permission for electric meter on unauthorized construction performed by Nana Solanki in the property owned by the Appellant. Advocate notice was addressed to Nana Solanki at the instance of Shukracharya Bhagwan Gholap about act of encroachment committed by him. Apparently, there are difference between the Appellant and Nana Solanki. Prosecution could not point out that the allege abuses were heard in the presence of independent witnesses and thereby it cannot be said the incident had occurred within public view. Considering these circumstances, the bar under Section 18 of the Atrocities Act would not be attracted.

ORDER

- i. The Criminal Appeal No.812 of 2023 is allowed and disposed off;
- ii. The impugned Order dated 17th July, 2023, passed below Exhibit-1 in Criminal Bail Application No.587 of 2023 by Additional Sessions Judge, Panvel-Raigad is quashed and set aside;
- iii. In the event of arrest of Appellant in connection with C.R. No.209 of 2023 registered with Khopoli Police Station,

District Raigad, Appellant be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

iv. Appellant shall report the Investigating Officer on 1st, 2nd and 3rd August, 2023 between 11:00 a.m. and 1:00 noon and thereafter as and when called for till filing of charge sheet;

v. Advocate for Respondent No.2 is permitted to file his Vakalatnama within one week from today.

[PRAKASH D. NAIK, J.]