

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.1008 OF 2023**

Shabbir Abdulla Khan

.. Appellant

Versus

The State of Maharashtra and anr

.. Respondents

...

Mr.Gaurav Parkar for the appellant.

Ms.Lisa Das with Mr.Swaraj Patil i/b Jay & Co. for respondent no.2.

Mr. S.R. Agarkar, APP for the State.

SDPO/Dy.SP S.D. Phadtare from Pen Division, Raigad, present.

CORAM: BHARATI DANGRE, J.**DATED : 1st NOVEMBER, 2023****P.C:-**

1 The appellant is apprehending his arrest in C.R.No. 248/2023 which is registered with Pen police station, District Raigad on 24/8/2023 by invoking Sections 504 r/w Section 34 IPC and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 The complainant is one Rashmi Gaikwad who narrated the background facts, claiming that a portion of land in City Survey No.1652 belong to her community and there is a temple standing in the said area, where special occasions are celebrated by the community.

Reference is made in respect of an incident dated 22/1/2023 when the accused no.3 was requested to remove the

vehicles which were parked in the open place and it is alleged that at the time, his son, the present appellant humiliated them by referring to their caste and refused to remove the vehicles.

The wife of accused no.2 is also alleged to have uttered abuses.

3 The grievance about this incident was made to the Chief Officer, Nagar Parishad, Pen and the *Chambhar Samaj*, Pen, Rohidas Nagar, also lodged a complaint to the Sub-Divisional Officer, Pen on 27/1/2023. A copy of the same is placed on record along with the affidavit filed by the appellant.

The said complaint referred to the abuses which were hurled at the entire community when the accused persons were asked to remove the vehicles so that they could peacefully perform the ceremony which was scheduled and then it is alleged that the accused persons uttered the following words :

“चांभारांनो तुम्हाला स्वतंत्रपूर्वी अस्पृश्य ठेवले होते तेच बरे होते आरक्षणामुळे तुम्हाला माज आला आहे. आमचे नादी भले भले लागत नाहीत, तर तुम्ही काय चांभारांनो चला निघा नाही तर इकडेच मारखाल”

After this, a complaint was filed on 24/8/2023, in which the casteist abuses are only attributed to the present appellant.

4 The learned APP, on instructions from the Investigating Officer, has submitted that the investigation is almost complete and all the co-accused are already released on

bail by the Sessions Court and it is only the present appellant who was refused the relief since the abuses are specifically attributed to him. The counsel for respondent no.2 would assertively submit that in the wake of the abuses, an offence u/s.3(1)(r) and 3(1)(s) is made out from the complaint, and since the offence is made out, the bar u/s.18 shall come into operation.

Though when the complaint is read, the abuses are attributed to the present appellant, but when one look at the complaint that is filed which was immediately on the occurrence of the incident on 22/1/2023, the version narrated therein is completely distinct from the one which is narrated by the complainant in the complaint lodged with the police station.

5 Moreover, it also create a doubt as to whether these abuses were hurled by the present appellant, since the complaint dated 27/1/2023 do not specifically contain this accusation. In any case, what are the abuses hurled and whether they were intended to humiliate the member of the scheduled caste, is the matter to be determined at the outcome of the trial.

However, at this stage, in the wake of the inconsistencies in the version of the complaint which is coming from the community itself, of which the complainant is a Member, the allegations appear to be doubtful.

Hence, it cannot be said that prima facie a case is made out and hence by raising a bar u/s.18, and particularly, in

the wake of the statement of the Investigating Officer who is present in the Court and state that the custodial interrogation of the appellant is not necessary and since the investigation is almost complete, the appellant deserve protection from arrest by the following order:

ORDER

- (b) The appellant Shabbir Abdulla Khan shall be released on bail in C.R.No. 248/2023 registered with Pen Police station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The appellant shall mark his attendance with the concerned police station on every Thursday and Friday between 3.00 p.m to 5.00 p.m for a period of two weeks and thereafter, as and when required by the Investigating Officer.
- (e) The appellant shall provide his current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.
- (g) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(SMT. BHARATI DANGRE, J.)