

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

CRIMINAL APPEAL NO. 989 OF 2022

Mohan Nana Shinde ...Appellant
Versus
The State of Maharashtra and Anr. ...Respondents

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Mr. Sujay Gangal, Advocate for the Appellant.

Mr. Sagar Amrut Rane, Advocate from the Legal-aid for Respondent No.2.

Ms. Pallavi N. Dabholkar, APP for the Respondent No.1 – State.

Kusum Dilip Gaikwad, Respondent No.2 is present in-person.

Mr. Shingare (P.S.I.) Wakad Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 27th JULY, 2023

PER COURT:

1. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST (Prevention of Atrocities) Act”) challenging the order dated 28.09.2022 passed by the learned Special Judge (under SC/ST [PoA] Act) and Additional Sessions Judge, Pune, rejecting the application for anticipatory bail.

2. The appellant is apprehending arrest in C.R. No.734 of 2022 registered with Wakad Police Station, Pimpri-Chinchwad, for offences punishable under Sections 452, 354-A, 307, 323, 504,

506, 141, 143, 147, 149 of Indian Penal Code (for short “IPC”), Sections 37(1), 37(3), & 135 of Maharashtra Police Act, 1951, Sections 4 & 25 of Arms Act, 1959 and Sections 3(1)(r)(s)(w)(ii) of the SC/ST (Prevention of Atrocities) Act.

3. The First Information Report (for short ‘FIR’) was registered on 28.08.2022 in respect to the incident which had occurred on 26.07.2022 at about 10.00 p.m. The quarrel took place between son of complainant and appellant’s family on the ground that the son of first informant was over-speeding his rickshaw in the vicinity. The accused No.1 Vishal Nana Shinde assaulted complainant’s son by using wooden stick and the other accused including the appellant had assaulted by fist and kick blows. The complainant intervened to rescue her son and that time appellant pushed the informant and her relative. The husband of informant intervened to specify the quarrel. He was slapped by the appellant. The accused assaulted and abused the daughters of informant. The co-accused Vishal Dada Shinde assaulted informant by sickle which resulted in injury. She was taken to the hospital for treatment. The appellant had allegedly touched the daughters of first informant and their chest and committed offence of outraging modesty. The complainant and others were abused on the basis of their caste.

4. The application for anticipatory bail preferred before the

Sessions Court has been rejected by the learned Sessions Judge vide order dated 28.09.2022.

5. Learned counsel for the appellant submitted that, there has been delay in lodging FIR. Cross case was registered at the instance of appellant against first informant and others vide C.R. No.735 of 2022. The accused therein had preferred an application for anticipatory bail before this Court which has been allowed vide order dated 11.01.2023. The abuses on caste are vague. The nature of abuses on caste is not specified. The FIR has been registered on account of *malafide*. The witnesses are relatives of the first informant. The co-accused, who was attributed role of assaulting by weapon was arrested and subsequently released on bail.

6. Learned A.P.P. and learned Advocate for Respondent No.2 submitted that the FIR prima facie makes out the offences registered against the appellant. The FIR also alleges that the appellant has outraged the modesty of the daughters of first informant. In view of the role assigned to the appellant, the offences under the Atrocities Act as well as under Section 354-A of IPC is made out. The offence under Section 3(w)(i) of the Atrocities Act is also made out. In view of bar under Section 18 of the atrocities Act, the appellant is not entitled for anticipatory bail.

7. The appellant and complainant are neighbours. On account of over-speeding the auto rickshaw driven by the son of informant there was quarrel between both the sides. Apparently, family members of both the sides were involved in quarrel. The FIR has been registered at the instance of both the sides. The appellant herein, who is the first informant in C.R. No.735 of 2022 registered on same day i.e. on 28.08.2022 for offences under Sections 354-A, 324, 341, 336, 427, 141, 143, 147, 149, 504 of IPC and Sections 7 & 8 of the Protection of Children from Sexual Offences Act, 2012. It is pointed that the complainant in the present case was impleaded as accused in the cross case was arrested and subsequently granted bail.

8. Perusal of the FIR against the appellant can be seen that the complainant has stated that the accused had abused them on caste. However, the entire FIR is completely silent about the nature of abuses. The witnesses in the case are the relatives of first informant. Considering all these circumstances, the appellant is entitled for relief sought in this appeal and the bar under Section 18 of the Atrocities Act would not be an impediment to allow this appeal.

ORDER

- i. Criminal Appeal No. 989 of 2022 is allowed;

- ii. The order dated 28.09.2022 passed by the learned Special Judge (under SC/ST [PoA] Act) and Additional Sessions Judge, Pune in Criminal Bail Application No.5870 of 2022 qua the appellant is set-aside.
- iii. Interim order dated 10th October 2022 is confirmed.
- iv. In the event of arrest of the Appellant in connection with C.R. No. 734 of 2022 registered with Wakad Police Station, the Appellant be released on bail on furnishing P. R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount;
- v. The Appellant shall attend the investigating officer as and when called for and cooperate with the investigation.
- vi. Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)