

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1166 OF 2023

Suraj Kisan Tonape .. Appellant
Versus
The State of Maharashtra and anr .. Respondents
...

Adv.L.M.Shukla a/w Adv. Aarti R Dharamsey i/b Adv. Chandan Jaiswal for the appellant.

Mr. Y.M. Nakhwa, APP for the State.

Mr. Kartik Garg appointed advocate for respondent no.2.

CORAM: BHARATI DANGRE, J.
DATED : 31st OCTOBER, 2023

P.C:-

1 Heard the learned counsel for the appellant and the learned counsel Mr. Kartik Garg, who is appointed to represent the respondent no.2, as well as the learned APP Mr. Nakhwa for the State.

The subject CR No.186/2023 came to be registered with Kurduwadi Police Station, on the complaint filed by one Prajwal Padangale, belonging to Scheduled Caste, who reported about an incident dated 12/4/2023.

As per his version, there was a religious celebration in the village from 11/04/2023 and as a part of it on 12/04/2023, an orchestra was arranged. As per the prevailing norms, the music stopped playing at 10:00 p.m, but two of the accused persons requested the organizers of the orchestra to play a song, and while it was being played, one Gore asked to stop the music.

In this whole episode, the complainant inadvertently stepped on the foot of Suraj Tonape, the applicant and realizing so, he immediately apologized to him.

However, he resorted back by abusing him and it is also alleged that he assaulted him on his hand by means of a bamboo. Thereafter, the other co-accused i.e. Navnath twisted his hand and pushed him, whereas Vaijinath and Saurabh insulted him in the name of caste and instigated people to thrash him and two slaps were given to him. Thereafter, he was kicked in his stomach, slapped on his cheek and the co-accused Ganesh and Dattatray, by referring to his caste insulted him.

The above version resulted in invoking of Section 323, 324, 143, 147, 148, 149, 504, of IPC and Section 3(1)(r), 3(1)(s), 3(2)(va), 6 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The medical certificate of the complainant is placed on record and it record of blunt trauma over chest and left shoulder and one abrasion of 1 cm x 0.5 cm on the dorsal surface of proximal phalange of middle finger of right hand. All the injuries are described as simple.

3 When the FIR is read as it is, no offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is attributed to the present appellant and as far as the assault is concerned, the injury sustained by the complainant is classified as a 'simple injury'.

In the wake of the above, in my considered opinion,

the custodial interrogation of the appellant is not warranted for the purposes of carrying out the investigation of the subject CR and he deserve protection from arrest, by the following order:

: ORDER :

- (a) Appeal is allowed. Impugned order dated 7/06/2023 passed by the Special Judge, Barshi in Anticipatory Bail Application No. 407 of 2023 is set aside.
- (b) It is directed that, in the event of arrest Appellant – Suraj Kisan Tonape shall be released on bail in connection with C.R.No.186/2023 registered with Kurduwadi Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or more sureties in the like amount.
- (c) The appellant shall report to the concerned police station on Thursday and Friday for period of two weeks between 5:00 and 6:00 p.m and thereafter as and when called for.
- (d) 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 appellant shall not tamper with evidence.

4 The learned counsel Mr.Kartik Garg, has represented the respondent no.2 and I would like to place on record my appreciation for the strenuous efforts taken by him. The Legal Services Authority is directed to pay the legal remuneration to him within period of six weeks from today.

(SMT. BHARATI DANGRE, J.)