

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1118 OF 2022**

Mahesh Keshav Shinde ...Appellant
Versus
State Of Maharashtra And Anr. ...Respondents

Mr. Ghansham S. Jadhav Advocate for Appellant.
Mrs. S. D. Shinde, APP for Respondent-State.
Ms. Hemlata M. Whaval appointed for Respondent No.2.

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**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 16th FEBRUARY, 2023.

P.C.:-

1. Heard Mr.Jadhav, learned Advocate for Appellant, Mrs. Shinde, learned APP for Respondent/State and Ms. Whaval, learned Advocate appointed for Respondent No.2. Perused record.

2. It is an admitted fact on record that, the Appellant is maternal uncle of principal accused Mr. Ganesh Kale. A bare perusal of record would indicate that, the allegation against Appellant is that, on 17th February 2022 when the Respondent No.2 had been to the house of Mr.Ganesh Kale to meet his parents and his maternal uncle i.e. Appellant, he requested her to accompany him to Akhuj bus-stand and there they would talk. At that place, he allegedly abused her on her caste and told her that, she is not a reasonable girl for marriage with Mr.Ganesh Kale. This is the specific allegation against the Appellant in the First Information Report.

3. Record indicates that, though the alleged abuses on caste were hurled at public place, the same were not within the public view, as there is no independent witness even to *prima facie* corroborate the version of Respondent No.2.

4. The facts recorded herein above are *prima facie* admitted facts on record and apart from it there is no other overt-act attributed to the Appellant in the entire crime. In view thereof, there is no bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 to consider the application of Appellant under Section 438 of Cr.P.C.

In view of the above, according to us, the Appellant deserves to be protected by pre-arrest bail.

Hence, the following Order:-

- (i) Interim relief granted by Order dated 17th November 2022 is hereby confirmed.
 - (ii) Impugned Order dated 21st September 2022 passed below Exhibit-1 in Criminal Bail Application No.1076 of 2022 by learned Additional Sessions Judge-2, Baramati, District Pune is set aside.
5. Appeal is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)