

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1156 OF 2022

Pritesh Ambaji Shitkar And Ors.

...Appellants

Versus

State Of Maharashtra And Anr.

...Respondents

....

Mr.Sahil D. Salvi a/w Mr.Sagar Redkar and Mr.Narendra Kalpoth
Advocate for Appellants.

Mr.Gulabrao Awasarmol a/w Mr.Arvind Awasarmol and Mr.Madhur
Salkar and Mr.Anand Awasarmol Advocate for Respondent No.2.

Mr. Y. Y. Dabake, APP for the Respondent-State.

....

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd JULY, 2023.

Digitally signed
by ETHAPE
DNYANESHWAR
ASHOK
Date: 2023.07.04
16:58:16 +0530

P.C.:-

1. This is an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (for short “SC/ST (Prevention of Atrocities) Act”) challenging the order dated 18th November 2022 passed by learned Additional Sessions Judge, Thane, Special Court (Atrocities Act) rejecting the application for anticipatory bail.

2. The appellants are apprehending arrest in connection with C.R. No. 229 of 2022 registered with Wagale Estate Police Station for offence punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian

Penal Code and Sections 3(1)(b), 3(1)(r), 3(1)(c), 3(1)(w)(i), 3(1)(z) of the SC and ST (Prevention of Atrocities) Act.

3. The First Information Report (for short “FIR”) was lodged by Respondent No.2. She is the wife of Appellant No.1. Appellant Nos. 2 and 3 are father-in-law and mother-in-law of Respondent No.2. Appellant No.4 is the brother-in-law of Respondent No.2. The complainant has alleged that it was the second marriage for the complainant and Appellant No.1. Their marriage was performed on 28th June 2019. The complainant belongs to Scheduled Caste. Pursuant to her marriage, she was ill-treated. She was repeatedly abused on her caste. The ill-treatment continued for substantial period of time. The Appellant No.1 has misled her and took her to the rental premises. Accused No.1 left the said premises. There was taunting from the accused that complainant was belongs to backward class. There was physical and mental torture. On completing investigation, charge-sheet is filed.

4. The appellants preferred an application for anticipatory bail before the Sessions Court at Thane. The said application was rejected vide order dated 18th November 2022.

5. Learned Advocate for Appellants submitted that, the allegations in the FIR are false. The FIR was lodged belatedly. The allegations are concocted and afterthought. Prior to registration of FIR, N.C. complaint was

lodged on 24th August 2021 for offences under Sections 323, 504 and 506 of I.P.C. The said complaint did not refer to any abuses on caste or ill-treatment on the basis of caste. The complainant had already initiated proceedings under the Domestic Violence Act. The provisions invoked for offences under the Atrocities Act are not applicable. Offence under Section 3(1)(r) of the Atrocities Act is not made out. The allegations relating to abuse reflected in the FIR had allegedly within residential premises and it is not within public view. Investigation is completed and charge-sheet is filed. Custodial interrogation of the appellants is not necessary.

6. Learned APP submitted that, there are specific allegations in the FIR alleging ill-treatment and abuses on the basis of caste. Prima facie case is made out against the appellants. The allegations in the FIR clearly shows that, complainant was physically and mentally tortured. The victim had earlier filed complaint to the police. FIR was registered subsequently on 30th September 2022. Investigation is completed and charge-sheet is filed. Interim order passed by this Court has been implemented and the appellants have executed bail bond. In view of bar under Section 18 of the SC and ST Act, the appellants are not entitled for anticipatory bail.

7. The respondent No.2 has filed reply opposing the relief sought in this appeal. Learned Advocate for Respondent No.2 submitted that, the complainant belongs to Scheduled Caste. There are specific allegations in

the FIR against the appellants depicting the nature of harassment caused to Respondent No.2. There were continuous abuses on the basis of her caste. She was restrained from performing certain acts. She was continuously snubbed that she belongs to Scheduled Caste. Learned counsel pointed out the relevant averments in the FIR referring to abuses on caste. The FIR clearly makes out the offences. The allegations are of serious nature. The respondent No.2 was physically and mentally tortured. In view of bar under Section 18 of the Atrocities Act, the appellants are not entitled for anticipatory bail. Reliance is placed on the decision of the Supreme Court in the case of **Hariram Bhambhi Vs. Satyanarayan & Anr., 2021 ALL SCR (Cri.) 2180.**

8. Primarily, the dispute is arising out of matrimonial differences between parties. The appellant No.1 is the husband of Respondent No.2. The Respondent No.2 has initiated the proceedings under the provisions of Protection of Women from Domestic Violence Act before the Court of learned JMFC, Thane under Sections 12, 17, 18, 19, 20, 22 and 23 of the said Act. The said proceedings were initiated on 23rd December 2021. The appellants are contesting the said proceedings. The respondent No.2 had filed complaint with the same police station on 24th August 2021 against the appellant Nos. 1, 3 and 4. The complaint mentions that, the opponents mentioned therein had abused, threatened her and refused to allow to keep

in the premises. The said complaint does not refer to any allegations of harassment has spelt out in the FIR and abuses on caste. The allegations with regard to the caste abuses had allegedly occurred in the residential premises. It has not occurred within a public place and within public view. There are no independent witnesses to corroborate the same. Prima facie ingredients to constitute the offence under Section 3(1)(r) of the Atrocities Act are not made out. The other provisions of Atrocities Act, which were invoked, are not made out from the FIR. It is pertinent to note that, the charge-sheet is filed. Interim order granted by this Court in the fact of this case. Prior to registration of FIR, respondent No.2 had initiated the proceedings under the Domestic Violence Act and during the pendency of this proceedings, the subject FIR was registered. Considering the factual aspects of this matter, bar under Section 18 of the Atrocities Act would not be an impediment to grant relief to the appellants in the nature of anticipatory bail.

ORDER

- (i) Criminal Appeal No. 1156 of 2022 is allowed.
- (ii) Interim Order dated 29th November 2022 is confirmed.
- (iii) Order dated 18th November 2022 passed by learned Additional Sessions Judge, Thane, Special Court (Atrocities Act) rejecting the application for anticipatory bail is set aside.

(iv) In the event of arrest of the appellants in connection with C.R. No.229 of 2022 registered with Wagale Estate Police station, the appellants be released on bail on their executing P.R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.

(v) Criminal Appeal stands disposed off.

(PRAKASH D. NAIK, J.)