

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1680 OF 2019

Dushyant Kesarinandan Mishra .. Appellant

Versus

The State of Maharashtra & Anr. .. Respondents

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Ms.Vandana Singh i/b Mr.Amarjeet H. Yadav for the Appellant.

Ms.P.N.Dabholkar, A.P.P. for the State.

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CORAM: BHARATI DANGRE, J.

DATED : 15th MARCH, 2023

P.C:-

1. The present Appeal is filed under Section 14(a) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, **“the Act of 1989”**), being aggrieved by the rejection of Anticipatory Bail Application by the learned Additional Sessions Judge, Thane on 30/09/2019. The Appellant is Accused in C.R.No.107 of 2017 registered with Mira Road Police Station, which has invoked Sections 143, 147, 148, 149, 354, 323, 504 of IPC and Sections 3(1)(r)(s), 3(1)(w), 3(2)(va), 6 of Atrocities Act.

The Appellant was admitted to the interim protection, which continued till date.

2. As far as notice to respondent No.2 is concerned, Sr.P.I. of Mira Road Police Station, had addressed a communication

dated 17/01/2023, informing that the notice has been served upon Sou.Manjula Ramesh Patel. Alongwith the said communication, an endorsement of Sou.Manjula Ramesh Patel of receiving the notice from the High Court is annexed. The aforesaid letter was tendered in the Registry on 06/02/2023 by hand through Mira Road Police Station. Hence, it can be said that the notice has been effectively served upon respondent No.2, but she has chosen not to appear.

3. The learned counsel appearing for the Appellant has placed reliance upon an order, releasing the co-accused Aditi Shinde & Ors. on bail at the hands of the Division Bench in Criminal Appeal No.610 of 2017, who were also arraigned as accused in the same C.R. and were accused of making casteist remark, resulting in invocation of offence under the Act of 1989. The Division Bench has observed as under :-

“4. As far as the allegation of abuse in relation to caste is concerned, the complainant has not mentioned in the FIR that she belongs to scheduled tribe and that any of the appellants abused her in relation to her caste. It is only after some daysa for the first time she came up with the story that the appellants abused her in relation to her caste hence, her supplementary statement was recorded after many days after the incident and therefore section relating to the Atrocity Act was added. We are of the opinion that false allegations have been made by way of an afterthought against the appellants in relation to giving abuses to the complainant in relation to her caste.

5. There are allegations in the FIR that the appellant nos.2 and 3 committed an offence under Section 3(1)(xi) of the Atrocity Act. It is noticed that in the FIR, complainant has stated that the appellant no.3 embraced her and at that time, appellant no.2 tore her blouse and pressed her chest. As far as this allegation is concerned, when according to the

complainant, appellant No.3 had embraced her in such condition, it was not possible for the appellant no.2 to tear her blouse and press her chest. In the FIR, the complainant does not state that the appellant no.3 embraced her from behind. On reading the FIR, it appears that appellant no.3 embraced her from the front side in which case it was not possible for the appellant no.2 to do the act as stated by the complainant in the FIR.”

4. Since on perusal of the FIR, no accusations are levelled against the Appellant under the Act of 1989, but it was only by way of a supplementary statement recorded three months thereafter i.e. in the month of April, 2017, the accusations under the Act of 1989 came to be levelled and that is how the offence came to be invoked.

The Division Bench has clearly noted that this is nothing but an afterthought and, hence, has released the co-accused on anticipatory bail and I see no reason why the benefit of the said order should not be extended to the Appellant. In the wake of the above, the following order is passed.

: ORDER :

- (a) Appeal is allowed.
- (b) In the event of arrest in connection with C.R.No.107 of 2017 registered with Mira Road Police Station, Thane, Appellant-Dushyant Kesarinand Mishra shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The Appellant shall report to the concerned police station, as and when called for.
- (d) The Appellant shall not directly or indirectly make any inducement, threat or promise to any person

acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(SMT. BHARATI DANGRE, J.)