

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1245 OF 2022

Sameer Suresh Patil

...Appellant

Versus

State Of Maharashtra And Anr.

...Respondents

....

Mr.Nilesh Pandey, Adv.Reshma Bopi and Mkr.Rahul Bhosale,
Advocate for Appellant.

Mr. Nadar Solomon John, Advocate for Respondent no.2.

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

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th JUNE 2023.

P.C.:-

1. This appeal is preferred u/s.14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'Atrocities Act') challenging the order dated 22nd November 2022 passed by learned Additional Sessions Judge, Kalyan below Exhibit-1 in Anticipatory Bail Application No.2184 of 2022 rejecting the application for anticipatory bail preferred by appellant.

2. Appellant is apprehending arrest in C.R No.234 of 2022 registered with Badlapur Police Station for offences under Sections 324, 323, 504, 506 r/w 34 of IPC. Subsequently Sections 143, 147, 149 of IPC and Section 3(1)(r)(s) of Atrocities Act were added.

3. The FIR was registered on 13th November 2022 at the instance of respondent no.2. It is alleged that on 11th November 2022 at 11.30 pm, the complainant was driving his motorcycle and Bhavesh was driving four wheeler. There was exchange of words between them. On 13th November 2022 at about 00.30 hours the informant, his friend Kunal Jadhav and Nilesh Jadhav were talking to each other near Gavdevi Temple. At that time Prasad Jadhav @ Babya and Bhavesh Sonavale came there and informed the complainant that incident occurred on previous day could be resolved and told the complainant and his friend Kunal to accompany them. They were taken to the ground situated near Saidham Building. Meherdeep Nagarkar and Sameer Patil (appellant) were present at the said place. They assaulted the complainant and his friend Kunal with wooden log and fist/kick blows. At that time Pratik Jadhav and Nilesh Jadhav intervened and separated them. Complainant and Kunal Jadhav went to Badlapur Police Station for lodging the complaint. They were sent to Rural Hospital with medical memo. After taking treatment they returned to police station for lodging the complaint. On the same day supplementary statement of complainant was recorded in which repeated his version reflected in FIR and in addition it was alleged that the appellant again came to the spot and abused the complainant on his caste and threatened him. He also referred to CCTV footage of incident of assault and identified appellant, Prashant Raje, Babya, Shantanu, Meherdeep and Bhavesh as persons seen in CCTV

footage while assaulting complainant and his friend.

4. Mererdeep Nagarkar, Prashant Raje and Bhavesh Sonavale were arrested. Chargesheet is filed against them.

5. Learned advocate for the appellant submitted that FIR is false. Appellant is implicated on account of political rivalry. There is improvement in the supplementary statement. The FIR does not refer to abuses hurled against complainant on the basis of his caste. The abuses on caste are reflected in supplementary statement. There is no independent witness to corroborate the version of complainant. The statement of Kunal Jadhav was recorded after the supplementary statement of complainant. Nilesh Jadhav and Pratik Jadhav refers to the fact that they did not hear any abuses on caste. In the absence of any independent persons having corroborated the version of complainant of abuses on caste, it cannot be said that incident had occurred within public view.

6. Learned APP submitted that offence is made out under Atrocities Act as well as under IPC. The version of complainant is corroborated by the statement of another witness. The incident of assault is captured in CCTV footage which is referred to in by the complainant in his supplementary statement. In view of bar u/s.18 of the Atrocities Act, appellant is not entitled for anticipatory bail. There are criminal antecedents against appellant. Four cases were registered against him. Amongst them three cases were registered against him in Badlapur (East) Police Station vide CR

Nos.36/2014, 156/2016, 101/2019. The fourth case is registered with Thane Nagar Police Station vide CR No.112 of 2016. Hence appeal may be rejected.

7. Advocate for respondent no.2-appellant submitted that supplementary statement was recorded on the same day which refers to the abuses on caste. The version of complainant is corroborated by others. Appellant is also involved in assaulting complainant and others. The complainant and his friends were abused on the basis of caste. The offence u/s.3(1)(r) and (s) are clearly made out. Appellant is politically influential person. He is avoiding arrest. The protest was required to be launched by Morcha for not taking action against appellant. There are criminal antecedents against appellant. Hence appellant is not entitled for any relief u/s.438 of Cr.PC.

8. The first incident had occurred on 11th November 2022. There was quarrel between complainant and one Bhavesh Sonawale. The second incident is dated 13th November 2022. Complainant and his friend Kunal Jadhav were assaulted by appellant and others. The FIR has been registered for the offences u/s.324,323,504,506 r/w 34 of IPC. Whereas after supplementary statement of the complainant, provisions of Atrocities Act and additional offences of IPC were invoked. The injuries suffered by complainant are simple in nature. Statement of Kunal Jadhav accompanying the complainant was recorded after the supplementary

statement of complainant on 16th November 2022, wherein he has referred to the abuses on caste. Although in supplementary statement complainant refers to the CCTV footage received by him, the CCTV footage refers to incident of assault. There is no reference to abuses on caste being recorded in CCTV footage. The complainant had stated that one Nilesh Jadhav and Pratik Jadhav had intervened and they have separated the assailants from assault. Their statements were recorded. Although they refer to the incident of assault, they have categorically stated that they did not hear any abuses on caste. Thus, there is improvement by complainant and Nilesh in their statement. There is no corroboration to the version of complainant and injured witness about abuses on caste by any independent person. The independent persons whose statement were recorded by the Investigating Officer does not support the prosecution case on the abuses on caste. Hence, it cannot be termed that incident had occurred within public view. In view of decision of this Court dated 14th December 2012 in ABA No.1207 of 2012 in the case of Chandra Kuchikurve Vs State of Maharashtra, the offence u/s.324 of IPC is bailable. Although there are criminal antecedents against appellant, considering the nature of evidence as stated above against appellant, bar under Section 18 of Atrocities Act would not be attracted. Case for grant of relief prayed in this appeal is made out.

ORDER

- (i) Criminal Appeal No.1245 of 2022 is allowed and disposed off;

- (ii) Impugned order dated 21st November 2022 passed by learned Additional Sessions Judge, Kalyan below Exhibit-1 in Anticipatory Bail Application No.2184 of 2022 is quashed and set aside;
- (iii) Interim order dated 20th December 2022 is confirmed;
- (iv) In the event of arrest of appellant in connection with C.R No.234 of 2022 registered with Badlapur Police Station, Badlapur, appellant be released on bail on his executing PR bond in the sum of Rs.30,000/- with one or two sureties in the like amount;
- (v) Appellant shall report Investigating Officer on 3rd, 4th, 5th, 6th and 7th July 2023 between 11.00 am and 1.00 noon and thereafter as and when called for till filing of charge sheet against him.

(PRAKASH D. NAIK, J.)

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