

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 97/2023

Roshan Diwakar Nikahre .vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. R. Vyas, Advocate for appellnat.
Mr. M. J. Khan, A.P.P. for respondent- State.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 17, 2023.

This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short, the 'Atrocities Act') challenging order dated 07.02.2023, passed by Additional Sessions Judge, Chandrapur, rejecting application of the appellant for grant of bail.

2. The appellant has been arrested on 22.01.2023 in Crime No.24/2023, registered with Police Station, Chimur, District Chandrapur for the offences punishable under Sections 294, 354(A), 323, 506 of the Indian Penal Code, 1860 (for short the, 'IPC') and Sections 3(1)(2), 3(i)(ii), 3(1)(r)(s), 3(2)(va) of the Atrocities Act.

3. Briefly stated, case of the prosecution is that the appellant is a troublesome person. The informant states that the appellant is in relationship with one lady; namely Narmada Ramteke, of the said locality, whose statement, unfortunately has not been recorded by the investigating officer. The appellant used to meet her. The women in the locality were doing rehearsal for the social function scheduled on 06/07.02.2023.

The approach road to Narmada's house travels from the locality where these ladies were doing rehearsal, because of which the appellant was not able to pass through the said place and to meet Narmada. He appellant got annoyed. On 20.01.2023, the appellant hurled caste based filthy abuses to the informant and other women.

4. The statement of about eighteen witnesses indicate that the abuses were indeed in very filthy language. Some persons namely; Gopal Khobragade, Ramdas Patil and Balaji Meshram made an attempt to give an understanding to the appellant not to abuse women of the locality in filthy language. The appellant, however, abused these people as well. The appellant uttered words that, 'he will crush the women under vehicle'. This sole statement is taken aid of by the prosecution to invoke latter part of Section 506 of the IPC, which provides that if the criminal intimidation is such that threat is of causing death or grievous hurt of a person, the punishment shall extend upto five years.

5. Learned counsel for the appellant submits that this statement in isolation cannot be taken aid of to invoke the latter part of Section 506 of the IPC. According to him, criminal intimation is defined to mean that the threat may be such that it causes alarm to the person. For illustration, he states that had the appellant started his vehicle and then by action shown that he is all set to take the vehicle forward and at that stage if he has threatened the villagers that they will be crushed, one may argue that alarm was caused in the minds of such persons and that threat was a life taking threat. This argument however will be

considered at the trial. I need not comment anything on this point though the valid point has been raised by the learned counsel for the appellant.

6. Be that as it may, the case basically rests upon the filthy abuses by the appellant to the villagers, particularly women villagers.

7. Learned counsel for the appellant submits that the appellant has no criminal antecedents. Without prejudice, he states that the appellant has learnt the lesson. He further submits that the appellant be put to appropriate conditions including the condition that he will not enter the village pending trial but then he submits that an opportunity of reformation should be given to the appellant.

8. Learned A.P.P. joined by the learned counsel for the respondent no.2 submits that the appellant is a notorious person. It is so because after he has been arrested, many villagers have given representation to the Assistant Commissioner of Police and the Police Inspector concerned that the appellant is involved in illegal liquor business.

9. These villagers are at liberty to file appropriate report with the Police Station. But then, that by itself should not be a ground to deny the relief to the appellant, particularly since the appellant has shown his willingness to stay outside the village.

10. In view of above and considering the nature of allegations and that the maximum punishment for the offence

under question, which would be up to five years if the latter part of Section 506 is to be omitted (which provides for maximum punishment up to seven years) and that the charge is not yet framed and that the trial is not likely to conclude in near future and further considering the peculiar facts of the case and the nature of evidence against the appellant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the appellant in jail. The interest of the prosecution can be protected by putting the appellant to appropriate terms.

11. The observations made in this order are prima facie in nature and are made for deciding the present appeal only. The trial Court shall not get influenced by the observations made in this order.

12. Resultantly, following order is passed.

ORDER

- (i) The appeal is allowed.
- (ii) Impugned order dated 07.02.2023, passed by learned Special Judge, Warora, in Crime No.24/2023 is hereby set aside.
- (iii) appellant – Roshan Diwakar Nikhare be released on bail in Crime No.24/2023, for the offences punishable under Sections 294, 354(A), 323, 506 of the Indian Penal Code, 1860 and Sections 3(1)(2), 3(i)(ii), 3(1)(r)(s), 3(2)(va) of the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on he executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

(iv) The appellant shall not enter the territorial jurisdiction of Kajalsar village, Taluka Chimur, District Chandrapur, till completion of the trial.

(v) The appellant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(vi) The appellant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vii) The appellant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence.

(viii) The appellant shall maintain law and order.

(ix) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The appeal is disposed of in the above terms.

(Anil L. Pansare, J.)

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