



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 103 OF 2024

Prakash Baburao Harne

....Appellant

VERSUS

The State Of Maharashtra And Others

.....Respondents

.....

Mr. R.V. Gore, Advocate for appellant.

Mr. S.B. Jadhav, APP for respondent Nos. 1 and 2-State.

Mr. N.T. Tribhuwan, Advocate for respondent No. 3/informant.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th FEBRUARY, 2024

ORDER :

1. This appeal filed under section 14-A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short 'Atrocities Act') takes exception to the order passed by learned Additional Sessions Judge and Special Judge, Aurangabad in E- Bail Application No. 97/2024, thereby rejecting anticipatory bail application of appellant.

2. Ratnakar Pandagale lodged FIR at C.R. No. 8 of 2024, with Harsul Police Station, District- Aurangabad, for offences punishable under sections 307, 324, 323, 143, 147, 148, 149, 447, 427, 504, 506, of IPC And Section 3 (1) (r), 3 (1) (s), 3 (1) (g) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, stating that on 09.01.2024

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at about 10.30 am, while he was in his gut No. 240/1 along with his son Santosh, appellant along with Rustom Harne, Kishor Harne, Babulal Harne, Lalchand Bramhankar and Tarachand Wani, and three to four unknown persons came there carrying sticks, axe and stones. Appellant told him as to why they are cleaning said space and they should leave the said space else they will be killed. Saying this appellant picked up big stone and hit it on the head of informant. Informant moved aside and saved himself from that blow. Thereafter, appellant assaulted informant with stick, slaps and kick blows. Persons accompanying appellant assaulted JCB driver with sticks and fist blows.

3. Upon lodging of FIR, appellant filed Bail Application No. 97/2024 under section 438 of Cr.P.C., which is rejected by Sessions Court. Hence, the present appeal.

4. Heard learned advocate for appellant, learned APP for respondent Nos. 1 and 2, and learned advocate for respondent No. 3/informant. Perused the investigation papers.

5. Admittedly, informant has already filed Regular Civil Suit No. 781/2019 against appellant, Kishor Harne and Rustom Harne, wherein injunction is operating in favour of informant in

respect of same land i.e. Gut No. 240/1, admeasuring 40 Are.

6. In the FIR there are no allegations that informant and his son were abused by taking name of caste. Son of informant is an advocate and his statement is recorded on 11.01.2024, wherein he alleged that appellant has taken name of his caste and abused and assaulted him. Since said allegation is not made by informant while lodging FIR, *prima facie*, these allegations appear to have been made afterthought to increase the gravity of the offence. Therefore, *prima facie*, the offences under Atrocities Act are not made out from the FIR, hence bar under section 18 of Atrocities Act would not be applicable.

7. Learned advocate for respondent No. 3 submitted that appellant has criminal antecedents as six offences are registered against him and therefore he is not entitled for discretionary relief of anticipatory bail.

8. Learned advocate for appellant submits that out of six offences registered against appellant, appellant is acquitted in four offences.

9. Injury certificate of informant shows that he has suffered blunt trauma on shoulder, left hand and left leg, which, *prima facie*, appear to be simple injuries. Sessions Court has

failed to appreciate these aspects and has erred in rejecting the application of appellant. Taking into consideration allegations made in the FIR and the fact that two accused persons were arrested and weapons allegedly used in the crime are recovered, pre-trial custodial detention of appellant is not necessary in the facts of the present case. Hence, the following order:-

ORDER

- (I) Criminal Appeal is allowed.
- (II) Impugned order dated 19.01.2024 passed by learned Additional Sessions Judge and Special Judge, Aurangabad in E- Bail Application No. 97/2024 is hereby quashed and set aside.
- (III) In the event of arrest of appellant- Prakash Baburao Harne in connection with Crime No. 8 of 2024, registered with Harsul Police Station, District- Aurangabad, for offences punishable under sections 307, 324, 323, 143, 147, 148, 149, 447, 427, 504, 506, of IPC And Section 3 (1) (r), 3 (1) (s), 3 (1) (g) of the Scheduled Castes & Schedule Tribes (Prevention of Atrocities) Act, 1989 he be released on executing P.B. and S.B. of Rs. 15,000/- with one surety in the like amount.

[NITIN B. SURYAWANSHI, J.]