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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.221 OF 2024

Nasir Bashir Pathan and Another

APPELLANTS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....

Mr. Mahendra P. Gandle, Advocate for the appellants

Mr. K. K. Naik, APP for respondent - State

Mr. Rakesh C. Bramhankar, Advocate for respondent No.3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 30th APRIL, 2024

ORDER :

1. This appeal, filed under section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, takes exception to order dated 21st February, 2024 passed by learned Additional Sessions Judge-2, Beed below Exhibit-1 in Criminal Bail Application No.155 of 2024, .

2. Respondent No.3 lodged FIR on 6th February, 2024 alleging that, her husband was ill in the year 2021, therefore, she had obtained hand loan of Rs.8,00,000/- from appellants and in turn, in the year 2023, her son had executed agreement to sell of shop and house in the name of appellant No.2. On 6th February, 2024 at about 6.45 p.m. appellants came to her house and demanded the

amount back. Informant told that she would repay the amount after she gets it. Thereafter, appellants abused informant in the name of her caste and also slapped her. Appellant No.1 misbehaved with informant and outraged her modesty. He also threatened her to implicate her son in a false case.

3. After registration of crime, appellants filed anticipatory bail application, which is rejected by the Trial Court. Hence, this appeal.

4. Heard learned advocate for appellants, learned APP for the State and learned advocate for respondent No.3 – informant. Perused papers of investigation.

5. It is the case of appellants that informant and her son executed an agreement to sell residential house and shop in favour of appellant No.2, by accepting consideration amount of Rs.15,41,000/- on 14th September, 2023. Subsequently, since informant and her son refused to execute sale deed, legal notice dated 3rd February, 2024 was issued by appellant No.2. On receipt of said notice, present FIR is lodged, by making false allegations against appellants.

6. There appears substance in the contention of appellants that since informant did not want to execute sale deed, though

she has accepted consideration amount, she has falsely implicated appellants in the present crime. Even if allegations made in the FIR are accepted to be true, admittedly, alleged humiliation in the name of caste has occurred inside the house of informant, hence obviously it is not in public view and, therefore, *prima facie*, offence under the Atrocities Act would not be attracted and hence bar under section 18 of the Atrocities Act, is not applicable in the present case.

7. Taking into consideration previous dispute between parties and considering allegations of outraging modesty of informant, which *prima facie* found to be unbelievable, as appellants, who are husband and wife went to the house of informant, where daughter in law of informant was also present and appellant No.1 has allegedly outraged modesty of informant in the presence of his wife i.e. appellant No.2.. Considering the peculiar facts of the present case, custodial detention of appellants is not necessary. Hence, the following order:-

ORDER

- A. Appeal is allowed.
- B. Impugned order dated 21st February, 2024 passed by learned Additional Sessions Judge-2, Beed in Criminal Bail Application No. 155 of 2024 is quashed and set aside.

- C. In the event of arrest of appellants in connection with Crime No.42 of 2024 registered with Shivaji Nagar Police Station, District - Beed for offence punishable under sections 354, 354 (B), 323, 504, 506, 34 of the Indian Penal Code and under section 3 (1) (r) s), 3 (1) (w) (I) of the Atrocities Act, appellants be released on executing Personal Bonds and Surety Bonds of Rs.15,000/- each with one surety each in the like amount.
- D. Till filing of the charge sheet, appellants shall attend the concerned police station as and when called by the Investigating Officer. Appellants shall not tamper prosecution evidence.
- E. Learned advocate appointed for respondent be paid fees as per schedule within four weeks.

[NITIN B. SURYAWANSHI]
JUDGE