



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 490 OF 2024

1. SHAHBAZ MUSHTAQUE KHAN (SHOEB MUSHTAK)
2. SHEKH SAMIR SHEKH AKHATAR
3. BAGWAN SAHIL LALA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. A. R. Syed, Advocate for the appellants
Mrs. M. L. Sangit, APP for the respondent/State
Mr. A. C. Sisodiya, Advocate for respondent no.2.

AND

CRIMINAL APPEAL NO. 492 OF 2024

1. JUNED SHAH FIROZ SHAH FAKIR
2. IFRAN JAKIR PINJARI (IMRAN BHIKAN PINJARI)
3. MOHSIN SHAH KHALIL SHAH (FUKRYA SHAH, GAUSIYANAGARWALA)
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. A. R. Syed, Advocate for the appellants
Mrs. M. L. Sangit, APP for the respondent/State
Mr. A. C. Sisodiya, Advocate for respondent no.2.

CORAM : R. M. JOSHI, J.

DATE : 1st OCTOBER, 2024

PER COURT :-

1. Heard.

2. The appellants apprehend arrest in connection with Crime No. 0097/2024 registered with Dondaicha Police Station, Dist. Dhule for the offences punishable under Sections 143, 146, 147, 149, 324, 336,

295, 296, 337 of the Indian Penal Code (for short 'IPC'), Sections 3(1)(v), 3(1)(y), 3(2)(v-a) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Atrocities Act'), Sections 37(1)(3)/135 of Maharashtra Police Act and Section 7 of Criminal Amendment Act.

3. The first information report indicates that on the occasion of the birth anniversary of Dr. Babasaheb Ambedkar, on 14th April, 2024 a procession was taken out by the informant and others. About 2000 people had participated in the said procession. When the procession came in front of the Jama Mashjid, Dondaicha, stones and bricks were pelted on the procession. As a result of which the procession was obstructed. Informant has named the applicants and others to be the persons who had threw stone at them. It is the case of the informant that since the informant and others who were part of the procession belong to the scheduled caste community, the procession was obstructed by them and therefore offence under Atrocities Act has been committed.

4. Learned counsel for the applicants submits that except for the allegation that there was a pelting of stone on the procession in front of Jama Mashjid, there absolutely no evidence to indicate that said alleged act of throwing stones has been done for the reason that the members of the scheduled caste community had taken out procession. It

is his submission that the charge-sheet is already filed and that it is not the case therein custodial interrogation of the applicants is necessary.

5. Learned APP and learned counsel for the informant vehemently opposed the appeals. It is the submission of the learned APP that there are criminal antecedents against the applicants and that they did not co-operate in the investigation. Hence, it is not the case for grant of anticipatory bail.

6. Learned counsel for the informant drew attention of the Court to the provisions of Sections 3(1)(y) and 3(i)(za)A of the Atrocities Act in order to contend that the utterance of abusive words is not *sine qua non* for attracting the provisions of Act and since the case of pelting of stones on the procession taken out by the members of scheduled caste community the provisions of the said act would get attracted to the present case. It is his submission that having regard to the seriousness of the crime as well as the embargo created by Section 18 of the Atrocities Act, this is not the case of grant of anticipatory bail.

7. No doubt Section 18 of the Act prohibits grant of anticipatory bail in case where the offence is made out under the provisions of Atrocities act. *Prima facie* perusal of the first information report does not indicate that the alleged pelting of the stones on the procession was done

only for the reason that the procession has been taken out by the members of the scheduled caste community. Perusal of the first information report indicates that the incident has allegedly occurred in front of Jama Masjid. As pointed out by learned counsel for the appellants often we come across with situation wherein incident of obstruction of processions passing in front of the Masjid occurs. Thus, it cannot be said that procession was stopped only for the reason that it was taken out by the members of the scheduled caste community. This Court is of the view that on the face of it the offences under the Atrocities Act do not get attracted. As such the embargo of Section 18 of the Atrocities Act has not application to the present case.

8. Perusal of the record indicates that it is a case of rioting, practically investigation is over. Not a single reason could be put forth before this Court by prosecution for custodial interrogation of the applicants. Hence, there is no reason to reject appeals. Hence, the appeals stands allowed in terms of interim order dated 27th May, 2024.

(R. M. JOSHI, J.)

ssp