



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 859 OF 2023

Ashu @ Asif Liyakat PathanAppellant

VERSUS

The State Of Maharashtra And AnotherRespondent

WITH

CRIMINAL APPEAL NO. 473 OF 2023

Jafar Karim ShaikhAppellant

VERSUS

The State Of Maharashtra And AnotherRespondent

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Mr. Majit Shaikh, Advocate for Appellants.

Mr. A.R. Kale, APP for State.

Mr. N.S. Salunke, Advocate for respondent No. 2.

WITH

CRIMINAL APPEAL NO. 549 OF 2023

Arbaj Akram PathanAppellant

VERSUS

The State Of Maharashtra And AnotherRespondents

WITH

CRIMINAL APPEAL NO. 551 OF 2023

Gullu @ Ajlam Yusuf ShaikhAppellant

VERSUS

The State Of Maharashtra And AnotherRespondents

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Mr. Rahul Tambe, Advocate for appellants.

Mr. A.R. Kale, APP for State.

Mr. N.S. Salunke, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st MARCH, 2024

ORDER :

1. Appellants apprehend arrest in C.R. No. 406/2023, registered with Shrirampur City Police Station, Ahmednagar, for offences punishable under sections 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code, under section 3(1)(r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. FIR is lodged by Jija Thorat on 26.04.2023 alleging that on 24.04.2023 about 7.30 pm, when he was sitting in front of door of house, accused along with others came there by raising slogans by referring to the caste of informant. Since, last one month they were threatening them and also insulting wife of his elder brother on account of her posture. They also beat her when she was cooking and scattered the articles in the house and thereafter abused in the name of their caste. At that time, accused persons were carrying stick, wooden stump, and axe.

3. It is the case of appellants that appellant Jafar Karim Shaikh has lodged FIR at C.R. No. 404/2023 with Shrirampur City Police Station, against 1. Sonu Sable 2. Raja Sable 3.

Bhagyawant Punde

Kamlesh Uttam Pawar 4. Dnyaneshwar Balu Hase 5. Dipak Jagdhane 6. Manoj Sable and one unknown person alleging that they have committed offence under sections 307, 143, 147, 148, 149, 385, 324, 323, 452, 427, 504, 506 of IPC and under section 25, 3, 4 and 7 of Arms Act. According to appellants, present FIR is lodged with a view to give counter blast to the FIR lodged by appellant Jafar Shaikh.

4. Learned APP and learned advocate for informant opposed the appeal of appellant Jafar Shaikh and Ajlam Shaikh on the ground that criminal offences are registered against them. They contend that offences under Atrocity Act are clearly made out from the FIR and investigation papers, therefore bar under section 18 is applicable to the facts of the present case and hence, appellants are not entitled for protection.

5. Heard learned advocates for appellants, learned APP for State and learned advocate for informant. Perused the investigation papers.

6. Perusal of FIR shows that it is alleged that seven accused persons including 1. Kakar 2. Feroz 3. Ashu 4. Gullu 5. Sofiyan 6. Arbaj (mother's name Mumtaj) 7. Arbaj (mother's

name Sunita) came together raising slogans and in chorus referred to the name of caste of informant and abused him in filthy language. They have also insulted sister-in-law of informant on account of her posture.

7. Allegations in the FIR that all accused in chorus have insulted informant by referring to his caste are unbelievable. There appears substance in the contention of appellants that due to the FIR lodged by appellant Jafar Shaikh, appellants are falsely implicated in the present crime. Offences under Atrocity Act, *prima facie*, are not attracted in the facts of the present case. Hence, bar under section 18 of Atrocity Act is not applicable.

8. Though, it is alleged in the FIR that accused were carrying sticks, wooden logs and axe, no assault by any weapon is attributed to them. Appellants were granted interim protection and they have co-operated in the investigation. Nothing is to be recovered from appellants, hence, their pre-trial custodial detention is not necessary.

9. Learned APP submits that appellants be restricted from entering their residential area, as informant is residing in

the vicinity. In the result, following order:

ORDER

- (i) Criminal Appeal Nos. 859/2023, 473/2023, 549/2023, 551/2023 are allowed.
- (ii) Order dated 19.08.2023 in Bail Application No. 194/2023 and orders dated 30.05.2023 in Bail Application Nos. 114/2023, 115/2023 and 116/2023, passed learned Special Judge and Additional Sessions Judge, Shrirampur, are hereby quashed and set aside.
- (iii) Interim protection granted to appellants is hereby confirmed.
- (iv) Appellants shall attend the concerned police station on every Saturday and Sunday, between 10.00 am to 12.00 noon, for a period of three months.
- (v) Thereafter, till filing of charge sheet, appellants shall attend the concerned police station as and when called by investigating officer and shall co-operate in the investigation.
- (vi) Appellants shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI, J.]