



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 676 OF 2023

Somnath S/o Arjunrao Galphade

... Appellant

VERSUS

The State of Maharashtra
and others

... Respondents

.....
Mr. G.G. Suryawanshi, Advocate for Appellant
Mr. S.R. Yadav Lonikar, Advocate for Respondent No.1
Mr. A.R. Hange, Advocate for Respondent Nos.2 and 3
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th MARCH, 2024

ORDER :

1. This appeal takes exception to the order passed by learned Additional Sessions Judge, Aurangabad in bail application no.985/2023, thereby granting anticipatory bail to respondent Nos.2 and 3.

2. Appellant has lodged FIR alleging that on 27.04.2023 at about 9.00 p.m. to 10.30 p.m., appellant had been to his hotel, at the relevant time, truck driver and persons accompanied with him parked container truck which was 40 to 50 feet in length on road in front of hotel and sat in another hotel namely Ganesh Hotel and they were consuming liquor, due to which the vehicles parked in front of hotel of appellant

were unable to access his hotel and could not take out their vehicles. Therefore, he sent his waiter to give message to the driver for removing the truck which could be helpful to his customers, but respondent nos. 2 and 3/accused abused and threatened the waiter, due to which he came back. Appellant again sent to his hotel manager to look into the matter, but the respondent nos.2 and 3/accused used criminal force and assaulted the manager and waiter. Thereafter, appellant/informant himself went to pacify the issue, but accused persons and 4-5 unknown persons started to pelt stones and abused on caste of appellant. Thereafter, 5-6 other persons came there in Scorio Car bearing no. MH-23-AS-3815 with arms i.e. sugarcane cutter and assaulted with fists and kick blows and abused on the caste of appellant. On the basis of these allegations, FIR bearing no.0378/2023 was registered with M.I.D.C. Waluj Police Station for the offences punishable under sections 323, 504, 56, 143, 148, 149 of the Indian Penal Code and under Sections 4 and 5 of Arms and sections 3(1)(r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. On registration of FIR, respondent nos.2 and 3 filed criminal bail application under section 438 of the Code of Criminal Procedure, which is allowed by the trial Court. Hence the present appeal.

4. Heard learned advocate for appellant, learned APP for respondent No.1-State and learned advocate for respondent nos.2 and 3.

5. Learned advocate for appellant submits that the trial Court has erred in relying upon the decision of Karnataka High Court in *Sri. Shailesh Kumar V. Vs. State of Karnataka, Laws (KAR)-2023-1-184*, which is not applicable to the facts of the present case. He further submits that there are eye witnesses to the incident and respondent nos.2 and 3/accused have specifically abused appellant in the name of caste, and therefore, bar under section 18 is applicable and hence trial Court could not have granted anticipatory bail to respondent nos.2 and 3/accused.

6. Learned APP submits that appropriate orders as per record may be passed. Learned advocate for respondent Nos.2 and 3/accused supported the impugned order.

7. The incident has taken place on 06.05.2023 and respondent Nos.2 and 3/accused were granted bail by order dated 14.06.2023 and charge-sheet is filed in the present case on 05.07.2023, and the case is numbered as Special Case No.282/2023.

8. It is alleged in the FIR that respondent nos.2 and 3/accused along with one unknown accused person in chorus have abused the appellant in the name of caste. *Prima facie*, these allegations are unbelievable, therefore, bar under section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in the facts of the present case is not attracted in the present matter. Trial Court has granted bail considering the fact that the weapons allegedly used in the offence are recovered and the investigation is almost complete, and therefore, no custodial interrogation of accused is required.

9. Considering the fact that charge-sheet is filed and the case is numbered as Special Case No.282/2023, no useful purpose would be served by remanding respondent nos.2 and 3/accused to the custody. In that view of the matter, appeal is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE