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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.727 OF 2023

Shrirang Nagorao Hattiambire ... Appellant

VERSUS

1. The State of Maharashtra
2. Jayashree D/o Rawan Sonkawade ... Respondents

WITH
CRIMINAL APPEAL NO.728 OF 2023

Shrirang Nagorao Hattiambire ... Appellant

VERSUS

1. The State of Maharashtra
2. Amit S/o Murlidhar Ghawle ... Respondents

WITH
CRIMINAL APPEAL NO.824 OF 2023

Shrirang Nagorao Hattiambire ... Appellant

VERSUS

1. The State of Maharashtra
2. Kshori Anantrao Alone ... Respondents

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Mr. V.J.Dixit, Senior Advocate i/b Mr. Ankush N. Nagargoje,
Advocate for the Appellant

Mr. A.R. Kale, APP for Respondent No.1

Mr. Mohit Deshmukh, Advocate for Respondent No.2 in
Cri.Appeal/727/2023

Mr. M.S. Taur, Advocate for Respondent No.2 in Cri.
Appeal/728/2023

Mr. S.P. Salgar, Advocate for Respondent No.2 in Cri.
Appeal/824/2023

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[CORAM: NITIN B. SURYAWANSHI, J.]

DATE : 05 FEBRUARY, 2024

ORDER:

1. These appeals filed under section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, take exception to the orders passed by learned Additional Sessions Judge-1, Ambad District Jalna in Criminal Bail Application Nos.248 of 2023, 252 of 2023 and 255 of 2023, thereby granting anticipatory bail to respondent No.2 in respective appeals.

2. Appellant lodged FIR on 22.07.2023, in short, alleging that he is the Chairman of *Bahujan Hitay Bhojan Utpadan Purvatha, Magasvargiya Audyogik Sahakari Sanstha, Ramai Nagar, Parbhani*. The Society was granted tender of supply of food at nine hostels of Social Welfare Department, vide order dated 11.07.2019 passed by Assistant Commissioner, Social Welfare, Jalna. Jayashri D/o Rawan Sonkawade respondent No.2 in Criminal Appeal No.727/2023 was appointed as Assistant Commissioner, Social Welfare Department, Aurangabad. She is presently working as Regional Deputy Commissioner, Social Welfare Department, Aurangabad since 29.11.2022. Amit S/o Murlidhar Ghawle -

respondent No.2 in Criminal Appeal No.728/2023 is a Social Welfare Officer, Group-B, who was at the relevant time working as in-charge Assistant Commissioner, Social Welfare Department, Jalna. Kishori Anantrao Alone - respondent No.2 in Criminal Appeal No.824/2023, who was at the relevant time working as Food Safety Officer.

Appellant in the FIR alleged that he belongs to Scheduled Caste category and on 05.02.2023, respondents, who were working on their respective posts have lodged a false offence against him at Crime No.83/2023, wherein it is alleged that appellant and his Society has supplied expired biscuits to the students in the hostels, those were harmful to the health of the hostelmates. Kishori Alone as Food Safety Officer lodged the report with intention to defame him and all the accused persons colluded together with an object of getting the appellant's food supply contracts cancelled. Accused are knowing that informant is a member of Scheduled Caste, and therefore, they have got his food supply contracts cancelled and caused humiliation to informant. 'C' summary report was filed in the said crime, it means that deliberately a false complaint was lodged against appellant so as to get his food supply contract cancelled. On the basis of FIR, crime No.

578/2023 was registered at Ambad Police Station, District Jalna for offences punishable under sections 420, 177, 179, 499, 500 read with section 34 of the Indian Penal Code and sections 3(1)(viii), 3(1)(ix), 3(1)(zc), 3(1)(t) and 3(1)(q) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

3. Pursuant to the registration of crime, respondent No.2 in respective appeals, since their names were in the FIR, filed Criminal Bail Application Nos. 248 of 2023, 252 of 2023 and 255 of 2023 for anticipatory bail. Learned Sessions Judge granted anticipatory bail to respondents. Hence, the present appeals.

4. Heard Mr. V.J. Dixit, learned Senior Advocate assisted by Mr. A.N.Nagargoje, learned advocate for appellant, learned APP for respondent - State and learned advocates for respondent No.2 in respective appeals.

5. Learned senior advocate urged that the Sessions Court has committed an error in allowing anticipatory bail to respondents ignoring bar under section 18 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. It is submitted that though there is strong material against the accused persons, the Sessions Court has erroneously granted

anticipatory bail to them. The arguments advanced by appellant were Ignored by the Sessions Court. Because of the pre-arrest bail granted to respondents accused, there is every possibility of tampering of the prosecution evidence. He submitted that FIR was registered at midnight and on very next day, tender allotted to appellant was cancelled on 07.02.2023 and tender was allotted to tenderer, who was held ineligible in the tender process, in which appellant was granted tender. It is submitted that though accused persons were knowing that appellant belongs to scheduled caste category, to harass the appellant, false FIR was registered against him by preparing false record and by giving false information. When the offence against appellant was registered, accused Kishori Alone was working as Warden at Girls Hostel, Ambad, Jayashri Sonkawade, was at the relevant time was working as Assistant Commissioner, Social Welfare Department, Aurangabad and Amit Ghawle was holding charge of Assistant Commissioner, Social Welfare Department, Jalna. Jayashri Sonkawade and Amit Ghawle has played major role in issuing food supply orders and in cancellation of food supply contract of appellant. Relevant record is in the custody of accused persons, therefore, their custodial interrogation is necessary. For recovery of relevant record, custody of accused is necessary.

These aspects are totally ignored by Sessions Court while granting anticipatory bail to the accused persons. No reasonable and fair opportunity of opposing the bail applications was granted to appellant. On this ground also the Impugned orders are liable to be quashed and set aside, and the pre-arrest bail granted to accused needs to be cancelled.

6. Learned advocates for accused, on the other hand, supported the impugned orders. They submitted that accused persons have acted in their official capacity in lodging FIR and canceling the tender and it cannot be said that the same was done only because appellant belongs to scheduled caste. There were numerous complaints against appellant's Society. Accused are Government servants and if arrested they may lose their job. According to them, no case is made out by appellant for cancellation of anticipatory bail.

7. Perused the appeals, documents filed along with the same and investigation papers.

8. Learned APP, on instructions from the Investigating Officer, who is present in the Court submits that, the documents, which were sought from the accused persons are seized from the Zilla Parishad office and for investigation, their custody is not necessary.

9. Perusal of record indicates that on 07.10.2022, 48 students gave complaint alleging that appellant does not provide proper and eatable food. Complaint dated 11.10.2022 against appellant alleges irregularities in providing food articles. There are number of complaint against appellant's Society from students, Association of students that appellant's society has committed irregularities in providing food articles. It appears that on the basis of number of complaints against appellant's Society, report was submitted for cancellation of contracts awarded to appellant's Society. Accused persons have taken action while discharging their duty. *Prima facie*, FIR does not make out a case that only because appellant belongs to Scheduled Caste, the action of registration of offence and cancellation of contracts awarded to Society was taken. Therefore, *prima facie*, offence under Atrocities Act are not made out in the present case, and therefore, bar under section 18 of Atrocities Act is *prima facie* is not attracted in the present case.

10. Investigation in the present offence pertains to documents, which are already seized by the Investigating Officer. Respondents-accused being government servants, they will be available for trial and they are not likely to flee from

justice. In the facts of the present case, pre-trial custodial detention of accused persons is not necessary.

11. While granting anticipatory bail to accused persons, the Trial Court has recorded cogent reason and the Trial Court has rightly granted anticipatory bail to accused persons. No case is made out by appellant for cancellation of anticipatory bail granted to accused persons.

12. Appeals being devoid of merit are dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane