



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 936 OF 2023

Jotirling Shivaji Hingmire

....Appellant

VERSUS

The State Of Maharashtra And Others

.....Respondents

.....

Mr. Prasanna Dadpe, Advocate for Appellant.

Mr. D.B. Bhange, APP for Respondents No. 1 and 2-State.

Ms. H.R. Lomate, Advocate appointed for respondent No. 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd FEBRUARY, 2024

ORDER :

1. Leave to amend and add prayer clause. Amendment to be carried during the course of the day.

2. This appeal filed under section 14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act'), challenges the order dated 30.09.2023 passed by learned Special Judge, Bhoom, in Criminal Bail Application No. 157 of 2023.

3. FIR is lodged by respondent No. 3 alleging that on 08.09.2023 at about 11.00 am, when he went in MSEB office to inquire about new electricity connection, appellant who is

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Assistant Engineer was present there. Informant showed him yellow ration card and asked him as to whether he is entitled for some concession on the said card as he belongs to Scheduled Caste. At that time, appellant abused him by taking name of his caste and slapped him and told him that if he comes again in the office he will be killed.

4. On the basis of this, FIR at C.R. No. 265/2023 is registered with Washi Police Station, Dist. Osmanabad, for offences punishable under sections 323, 504, 506 of Indian Penal Code and section 3(1)(r) and 3(1)(s) of Atrocities Act. After lodging of FIR, appellant moved Bail Application No. 157 of 2023 in the Sessions Court, which is rejected. Hence, the present appeal.

5. Heard learned advocate for appellant, learned APP for respondent No. 1 and 2 and learned advocate appointed for respondent No. 3. Perused the record.

6. Learned advocate for appellant submits that there is no reason for appellant to abuse informant in the name of his caste. Accusations levelled against appellant in the FIR are *prima facie* unbelievable. He further submits that as per the allegations

made in the FIR, incident has taken place in the office of appellant and same is not taken place in a public view. Therefore, offences under Atrocities Act are not made out. He further submits that informant already has electricity connection and has placed on record light bill issued to him.

Further submission is that in fact at 11.00 am on the date of incident he was not present in the office and at that time he was at Yelshi Toll Plaza as he was traveling to attend the office. FASTag receipt of the date and time of incident is placed on record by appellant. It is also submitted that on the date of incident appellant has conducted Lokadalat in his office. He was assaulted by three persons in his office. Therefore, he has lodged FIR at C.R. No. 264 of 2023 with Washi Police Station District- Osmanbad for offences punishable under sections 353, 332, 323, 504, 506 r/w. 34 of Indian Penal Code, against Suryakant Sandse, Bhagwat Kawade and Vinod Mane and with a view to give counter blast to said FIR, informant is set up by accused persons in the FIR lodged by appellant.

7. Perusal of record shows that there is delay in lodging FIR, which is not explained. According to informant, he wanted electricity connection for the tin shade in which he is staying

since last seven months. However, said space is not yet transferred in his name. Though he claims to have purchased said space, nothing is placed on record to confirm the said fact. It is not claimed by informant that he had placed documents of ownership of said tin shade etc., to claim electricity connection. He has claimed that he produced yellow color ration card before the appellant and asked him whether he is entitled for some concession.

8. Charge sheet is filed in the present matter on 25.12.2023. Statement of Amol Mane is recorded who claims to be well acquainted with informant and Santosh Gadekar, he has given in verbatim same statement as mentioned in the FIR. Informant does not mentioned in the FIR that he was present at the time of has incident. It is claimed that Santosh Gadekar rescued him from appellant. Statement of Santosh Gadekar is not recorded in the investigation. In the FIR it is alleged by informant that incident has taken place in MSEB office. However, while showing spot of incident he has claimed that incident has taken place on the steps of MSEB office. It therefore *prima facie* appears that incident has not taken place within a public view.

9. *Prima facie*, there appears substance in the

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contention of appellant that with a view to give counter blast to FIR lodged by him, accused persons has set up informant and he is implicated in false FIR.

10. For the aforestated reasons, *prima facie*, no case under Atrocities Act is made out and hence bar under section 18 of Atrocities Act is not applicable in the present case. Since charge sheet is already filed, pre-trial custodial detention of appellant is not necessary. Appellant is a Government servant and if arrested, there is possibility that he may loose his job. Hence, appeal deserves to be allowed. In the result, following order:

ORDER

- (I) Criminal Appeal is allowed.
- (II) Order dated 30.09.2023 passed by learned Special Judge, Bhoom, in Criminal Bail Application No. 157 of 2023 is hereby quashed and set aside.
- (III) In the event of arrest of appellant- Jotirling Shivaji Hingmire, in connection with Crime No. 265 of 2023 registered with Washi Police Station, Taluka- Washi, Dist. Osmanabad for the offences punishable under sections 323, 504, 506 of IPC r/w sections 3(1)(r) and 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on

executing P.B. and S.B. of Rs. 15,000/- with one surety in the like amount.

11. High Court Legal Services (Sub Committee) Aurangabad, shall pay fees of learned advocate appointed to represent respondent No. 2, as per schedule, within four weeks from today.

[NITIN B. SURYAWANSHI, J.]