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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.960 OF 2023

Vijay Annasaheb Thombre

APPELLANT

VERSUS

The State of Maharashtra and Another

RESPONDENTS

.....
Mr. Sudhir K. Chavan, Advocate for the appellant

Mr. S. P. Sonpawale, APP for respondent - State

Ms. Priyanka P.Shinde, Advocate for respondent No.2 (appointed)

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st APRIL, 2024

ORDER :

1. By this appeal, filed under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, appellant challenges order passed by learned Additional Sessions Judge, Parbhani in Criminal Bail Application No. 743 of 2023, thereby rejecting anticipatory bail application filed by the appellant.

2. FIR is lodged by informant alleging that on 8th September, 2023, approximately at 2.30 p.m. when he was grazing cattle, Ramesh Chibade and appellant came there and questioned him as to why he had smashed window glass of appellant's car. Informant told them that he has not done so and expressed his

willingness to compensate for it. Thereafter, Ramesh Chibade brought Kasara (rope used to tie cattle) and put it around neck of informant and tried to strangle him, because of which he vomited blood. On hearing shouts of informant, Sopan Thombre, who was grazing his cattle nearby, came there and intervened. At that time wife and son of informant came there and on seeing them appellant and co-accused fled from the spot.

3. On registration of crime, appellant filed anticipatory bail application, which is rejected by the Trial Court, hence the present appeal.

4. Heard learned advocate for appellant, learned APP for the State and learned advocate for informant. Perused the investigation papers.

5. Appellant claims to be innocent. According to him, from time to time, he has complained to Village Panchayat authorities about erecting a platform and installing a flag of a particular community in the property of appellant and in the property of village panchayat. In some of the complaints made by him, name uncle of informant – Sakharan Sadashiv Chavan is mentioned. Therefore, at the instance of uncle of informant, appellant is falsely implicated in the present crime. It is submitted that the FIR is lodged after a delay of about 5 days.

6. Learned APP, on the basis of papers of investigation, submits that medical papers show that there are light ligature marks around neck of informant and there are statements of two eyewitnesses, who have seen the incident. It is further submitted that there are criminal antecedents against appellant and, therefore, he is not entitled any discretionary relief of anticipatory bail.

7. Learned advocate for informant vehemently opposed the appeal contending that medical report supports the allegations made in the Fir and, therefore, in view of bar under section 18 of the Atrocities Act, appellant is not entitled for anticipatory bail.

8. Record indicates that, on 11.04.2023, appellant had complained to the Gram Sevak about removal of platform and flag installed by persons of a particular community, on his and Grampanchayat's property. On 17.04.2023, appellant was informed that after Gram Sevak visited the disputed property and carried out measurement, it was revealed that some people from a particular community, without obtaining any permission, have constructed a platform and installed a flag on the area belonging to Gram Panchayat and appellant. A notice was issued to uncle of informant on 19.04.2023, that within 3 days the platform and flag should be removed and the same can be installed in the

area of Samaj Mandir, after obtaining prior permission of the Gram Panchayat.

9. On 26th August, 2023, appellant had complained to the Sub Divisional Police Officer that 13 persons from a particular community have stolen material for construction of shed owned by appellant on 25th August, 2023 at 7.00 p.m. Name of uncle of informant appears at serial No. 9 in the said complaint.

10. In the above background, FIR lodged by informant needs to be considered. *Prima facie*, perusal of the FIR does not reveal any ingredient of offence punishable under the Atrocities Act. It is not the case of informant that he was assaulted because he belongs to a particular community or that his caste was referred by appellant or co-accused during the incident and, therefore, bar under section 18 of the Atrocities Act would not be attracted to the present case.

11. As far as criminal antecedents of appellant are concerned, learned advocate for appellant has placed on record the status of the cases registered against appellant, which shows that out of 9 cases registered against appellant, he is acquitted in 6 cases, Presently, RCC No. 294 of 2023 pursuant to CR No. 114 of 2023 under section 341 read with 504 of the Indian Penal Code and RCC No. 95 of 2020 for offences punishable under section 327,

323, 504 of the Indian Penal Code are pending.

12. Taking into consideration the peculiar facts of the present case, possibility of false implication of appellant at the instance of uncle of informant, cannot be ruled out at this stage. Investigation papers do not show that statement of Sopan Thombre is recorded. Statements made in the FIR as well as statements of son and nephew of informant *prima facie* show material discrepancies. There is delay in lodging the FIR, which is not explained by informant. Co-accused Ramesh Chibade was arrested and he is released on regular bail. In this view of the matter, pre-trial custodial detention of appellant is not warranted, in the facts of the present case.

13. In the result, following ordering order-

ORDER

- A. Appeal is allowed.
- B. Impugned order dated 4th October, 2023 passed by learned Additional Sessions Judge, Parbhani in Criminal Bail Application No. 743 of 2023 is quashed and set aside.
- C. In the event of arrest of appellant in connection with Crime No. 121 of 2023 registered with Bamani Police Station, District - Parbhani for offence punishable under sections

307, 506 read with 34 of the Indian Penal Code and under section 3 (2) of the Atrocities Act, appellant - Vijay Annasaheb Thombre be released on executing Personal Bond and Surety Bond of Rs.15,000/- with one surety in the like amount.

- D. Till filing of the charge sheet, appellant shall attend the concerned police station as and when called by the Investigating Officer and shall co-operate in the investigation and shall not tamper prosecution evidence.
- E. Learned advocate appointed for informant shall be paid fees as per schedule within four weeks.

[NITIN B. SURYAWANSHI]
JUDGE