



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1074 OF 2023

Hari Sudhakar Fajage And AnotherAppellants

VERSUS

The State Of Maharashtra And AnotherRespondents

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Mr. Mayur Borse, Advocate for appellants.

Mr. S.R. Wakle, APP for respondent No. 1.

Mr. Akash Gade, Advocate appointed for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th MARCH, 2024

ORDER :

1. By this appeal filed under section 14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, appellants challenge the order dated 30.10.2023, passed by learned Additional Sessions Judge, Kandhar, in Misc. Cri. Application (Bail) No. 194/2023.

2. Respondent No. 2 lodged FIR on 29.09.2023 alleging that on 26.09.2023 at about 11.30 am, informant attended the parents-teacher meeting at Zilla Parishad Primary School, Majresawangi along with her son Sudhir, as her grand daughter is studying in the said school. During the said meeting,

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informant's son Sudhir, Dilip Kasbe and other people told teachers not to allow people drinking liquor, in the school. At that time, both appellants abused her son Sudhir by referring to the name of his caste and thereby insulted the schedule caste community. They also inflicted slaps and fists blows on her son. Persons present there saved the son of informant from appellants.

3. Heard learned advocate for appellants, learned APP for State and learned advocate for respondent No. 2. Perused the investigation papers.

4. It is the case of appellants that FIR at C.R. No. 147/2023 is lodged by a teacher of Zilla Parishad school who belongs to schedule caste against 1. Sudhir Fulare 2. Gundappa Tulshiram Pandalwad 3. Shivram Tulshiram Pandalwad 4. Dilip Ambadas Kasbe and 5. Bhanudas Balaji Dunde, alleging that, accused persons came in the school and sat in the headmaster's cabin. When teachers went there and asked as to why they have come, accused persons said that they discriminate the students, they do not teach in the school, they should clean the plates of students and they should clean the school also. They also threw away important documents from the headmaster's table. They

also demanded some amount from grant and if that is not given to them, they will not permit teachers to come to the school. They also threatened to close the school if amount from grant is not given to them. According to appellants, so as to give counter blast to said FIR, this false FIR is lodged by informant against them.

5. Learned APP and learned advocate for respondent No. 2/informant strenuously opposed the appeal contending that FIR clearly discloses the insult of informant's son in the name of caste, within public view. Therefore, bar under section 18 of Atrocity Act would be applicable in the present case. Hence, appellants are not entitled for protection.

6. Apart from delay in lodging FIR, it is specifically mentioned in the FIR that both appellants at the same time abused informant's son by taking name of his caste and insulted him. Delay in lodging FIR and allegation of taking name of caste in chorus, *prima facie*, make allegations unbelievable. Hence, *prima facie*, offences under Atrocity Act are not attracted to the present case and therefore bar under section 18 would not be applicable.

7. There appears substance in the contention of appellants that only with a view to give counter blast to the FIR lodged against husband of informant and others, present FIR is lodged, thereby falsely implicating the appellants in the present crime.

8. Learned advocate for informant and learned APP have pointed out statements of alleged eye witnesses who have supported the allegations made in the FIR. It is to be noted here that alleged eye witnesses are accused in FIR lodged by one of the teacher. Their statements are stereotype and almost in verbatim same. Therefore, at this stage, no reliance can be placed on the statements of eye witnesses. Offence is registered on 29.09.2023 and investigation appears to be on the verge of completion. Nothing is to be recovered from appellants, hence, pre-trial custodial detention of appellants is not necessary.

9. In the result, appeal is allowed by setting aside order dated 30.10.2023, passed by learned Additional Sessions Judge, Kandhar, in in Misc. Cri. Application (Bail) No. 194/2023.

10. Interim protection granted to appellants by order dated 07.11.2023 is hereby confirmed.

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11. 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. Appellants shall not tamper the prosecution evidence.

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

[NITIN B. SURYAWANSHI, J.]