



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 1082 OF 2023

PRAKASH SHIVAJI HARAN

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Pawankumar S. Agrawal, Advocate for Appellant

Mr. N.B. Patil, APP for Respondent No.1/State

Mr. Balasaheb N. Magar, Advocate for Respondent No.2

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 05th MARCH, 2024

PER COURT :

1. By this appeal filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, appellant takes exception to the order dated 26/10/2023, passed by learned Additional Sessions Judge-2, Hingoli, in Criminal Bail Application No.564/2023, thereby rejecting anticipatory bail application filed by appellant.

2. Informant who belongs to scheduled caste has lodged FIR alleging that on 11/10/2023, at about 01:00 p.m. she along with her husband went to clean her house at Dhumal lane. At that time, appellant who is resident of same lane came in front of their house and stared at her. Thereafter when she and her husband were returning back on motorcycle to their new house, at about 01:30 p.m. when they reached weekly bazar, appellant was following them. He was honking and winking at her. When informant and her

husband came in front of Appaswami Arch, appellant came there from behind and by honking horn of his motorcycle abused her and called name of her caste and insulted her, then he left. Thereafter they went to her brother-in-law's shop, informant started crying there, she disclosed the incident to her brother-in-law Suresh. On the basis of FIR lodged by informant C.R. No.350/2023 is registered with Sengaoon Police Station, Dist. Hingoli, for offence punishable under Sections 354-A, 354-D and 294 of Indian Penal Code and Sections 3(1)(w) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Appellant approached Sessions Court for anticipatory bail by filing Criminal Misc. (Bail) Application No.564/2023, which is rejected. Hence, the present appeal.

3. Heard learned APP for respondent No.1/State, learned advocate for appellant and learned advocate for respondent No.2. Perused the investigation papers.

4. It is the case of appellant that as he campaigned against informant during Village Panchayat Elections, he is falsely implicated in the present crime.

5. Learned APP opposed the appeal by relying on investigation papers.

6. Learned advocate for informant submits that appellant

has suppressed material fact from this Court that his wife has lodged FIR against informant and her husband at C.R. No.351/2023, with Sengaon Police Station, for offence punishable under Sections 384, 506 r/w 34 of I.P.C. alleging that husband of informant contacted her relative Amol Pralhad Tidake on cell phone and called him at footwear shop, and told that he is likely to lodge FIR against appellant under Atrocity Act and under Section 354 of I.P.C. If the said case is to be withdrawn then he should be paid amount of Rs.2 lakhs. Learned advocate for informant further submits that on 26/04/2023 informant's brother-in-law's wife has made application to the police alleging that appellant has called name of her caste and abused her, so also threatened to kill her.

7. Perusal of investigation papers reveal that incident has allegedly taken place at 01:30 p.m. on 11/10/2023 and FIR is lodged at 19:20 Hrs. Except statements of husband and brother-in-law of informant there is no other statement supporting the allegations made in FIR. Therefore, *prima facie* it appears that alleged calling of name of caste of informant and abusing her has not taken place in public view, as nobody except her husband has witnessed the same. Therefore, *prima facie* offence under Atrocity Act cannot be said to be made out, hence, bar under Section 18 would not apply to the facts of present case.

8. Argument of appellant that he is falsely implicated as he

campaigned against informant in Village Panchayat Elections is probable and liable to be accepted. FIR lodged by appellant's side can be said to be knee jerk reaction to the FIR lodged by informant against appellant.

9. Considering the allegations made in FIR nothing is to be recovered from appellant. Therefore, pre-trial custodial detention of applicant is not necessary.

10. In the result, appeal is allowed by confirming interim protection granted to appellant by order dated 09/11/2023. Impugned dated 26/10/2023, passed by learned Additional Sessions Judge-2, Hingoli, in Criminal Bail Application No.564/2023, is hereby quashed and set aside.

11. Till filing of charge-sheet, appellant shall attend concerned police station as and when called by investigating officer and shall co-operate in the investigation. Appellant shall not tamper prosecution evidence.

(NITIN B. SURYAWANSHI, J.)