



drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1132 OF 2023

Nijamuddin Mustaqali Ansari

APPELLANT

VERSUS

The State of Maharashtra and Another

RESPONDENTS

.....

Mr. S. E. Shekade, Advocate for the appellant

Mr. S. B. Jadhav, APP for respondent - State

Mr. O. V. Waghmare, Advocate for respondent No.2 (appointed)

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd JANUARY, 2024

ORDER :

1. This appeal, filed under section section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short Atrocities Act), is directed against order passed by learned Additional Sessions Judge, Ahmednagar below Exhibit-18 in Special Case No. 172 of 2023.

2. Appellant is accused in CR No. 779 of 2023, registered with Tofkhana Police Station, Ahmednagar for offence punishable under section 307, 323, 143, 147, 148, 149, 427 and 201 of the Indian Penal Code and under sections 3(1)(w)(i) (ii), 3(2)(v-a) of the Atrocities Act.

3. In the FIR, injured has alleged that on 27th May, 2023 appellant, along with 6 other accused persons, assaulted him. Pursuant to registration of the FIR, appellant and his son Diljan came to be arrested. After completion of investigation, charge sheet has been filed. Appellant preferred Application below Exhibit-18 in Special Case No. 172 of 2023 seeking regular bail, which is rejected by the Trial Court, hence the present appeal.

4. Heard learned advocate for appellant, learned APP for State and learned advocate for the 2nd respondent. Perused the investigation papers.

5. Main role of assault with iron rod is attributed to accused Diljan, son of appellant. In the FIR, it is only stated that appellant accompanied the assailants. Some of the eyewitnesses have stated that appellant was involved in the assault. However, in the FIR, no such overtact is attributed to appellant.

6. Appellant is arrested on 28th May, 2023 and charge sheet in the present matter is filed on 26th July, 2023. Appellant, therefore, is in jail since last more than 7 months and in the facts of the present case his further custodial detention is not necessary. Appeal, therefore, deserves to be allowed.

7. In the result, following order

ORDER

- A. the appeal is allowed.
- B. Impugned judgment and order passed by learned Additional Sessions Judge, Ahmednagar below Exhibit-18 in Special Case No. 172 of 2023 is quashed and set aside.
- C. Appellant is directed to be released on bail in CR No. 779 of 2023, registered with Tofkhana Police Station, Ahmednagar on furnishing PB and SB of Rs.15,000/- with one surety in the like amount.
- D. Appellant shall not tamper prosecution evidence. Appellant shall regularly attend the dates of the Trial Court.
- E. Legal Aid Services Sub Committee, High Court, Aurangabad to pay the fees of the learned advocate appointed to represent the 2nd respondent, as per rules, within four weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE