



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1164 OF 2023

Tukaram Bhausahab Tanawade

... Appellant

VERSUS

The State Of Maharashtra
and others

... Respondents

.....
Mr. Abhishek C. Deshpande, Advocate for the Appellant
Mr. S.B. Jadhav, APP for Respondent Nos.1 and 2 – State
Ms. Sayali Tekale, Advocate (appointed) for Respondent No.3
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 07th FEBRUARY, 2024

ORDER :

1. This appeal filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenges order dated 17.10.2023, passed by learned Additional Sessions Judge, Ahmednagar in Bail Application No.1655 of 2023.

2. The second respondent lodged FIR against appellant alleging that on 06.12.2022 at 9.30 a.m., while she was cooking, heard the noise of window pane. When she saw there, the appellant was standing outside the window. He threw a stone wrapped in white paper inside the house. When

informant saw the paper, she abused appellant and asked him as to what he has thrown. At that time, appellant abused her in the name of caste. Indecent things were happened in the said incident. Informant, therefore, lodged FIR on 10.12.2023

3. Appellant filed anticipatory bail application No.1655 of 2023 under section 438 of the Code of Criminal Procedure, which is rejected by the Sessions Court. Hence, this appeal.

4. Heard learned advocate for appellant, learned APP for respondent – State and learned advocate for respondent No.3.

5. Learned advocate for appellant submits that appellant has lodged FIR at Crime No.938 of 2023 against informant's husband alleging that he has tried to extort an amount of Rs.5,00,000/- from appellant and if the said amount is not paid, he will implicate appellant in false atrocity case. By relying on decision of Single Judge in Criminal Appeal No.1030 of 2018, he submits that the alleged insult of informant has not taken place in public view, and ingredients of offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, are not made out. Therefore, bar under Section 18 is not applied to the present matter.

6. Learned APP assisted by learned advocate for informant has strenuously opposed the application contending that there is bar under section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and therefore, the application may be rejected.

7. Perusal of investigation papers show that the incident has taken place in public view. This Court, in Criminal Appeal No.1030 of 2023, by relying on Division Bench judgment in *Pradnya Pradeep Kenkare and Ors. Vs. State of Maharashtra, 2005 (3) Mh.L.J. 368*, has held that, "*the expression within public view must be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of at least one independent person*".

8. In the present case, as it appears from the narration in FIR and the papers of investigation that the incident of alleged insult committed by appellant has not taken place in the public view. Therefore, bar under section 18 could not apply.

9. Appellant was granted interim protection and he has co-operated in the investigation. He has also given his specimen handwriting. The investigation appears to be on the

verge of completion. In the peculiar facts of the present case, pre-trial custodial detention of appellant is not necessary.

10. In the result, appeal is allowed by confirming interim protection granted to appellant by order dated 14.12.2023.

11. High Court Legal Aid Services Sub Committee, Aurangabad to pay the fees of learned advocate Ms. Sayali Tekale representing respondent No.3, as per schedule, within four weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane