

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 97 OF 2023

Ajaysingh Motisingh Sengar

.... Appellant

Versus

State of Maharashtra and Anr.

.... Respondents

YUGANDHARA
SHARAD
PATIL

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Mr. Ram Apte, Sr. Advocate a/w C.S. Patil a/w Govind Regmi i/b.
Arjun Singh Thakur, for the Appellant.

Mr. Nitin B. Patil, APP for the State/Respondent No1.

Mr. Amit K. Katarnaware Respondent No. 2 (in person) a/w
Aditya A. Katarnaware present.

CORAM :SARANG V. KOTWAL, J.

DATE : 3rd APRIL, 2024

PC. :

1. The Appellant has challenged the Order dated 17/01/2023 passed by the Additional Sessions Judge, Panvel in Criminal Bail Application No. 7 of 2023. In effect, the Appellant is seeking anticipatory bail in connection with C.R. No. 295 of 2022 registered at Naveen Panvel Police Station, Navi Mumbai under section 295A of the Indian Penal Code and under section 3(1)(u) and 3(1)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the

said Act”). The Appellant was protected by the ad-interim order dated 01/02/2023, based on the submissions made by the learned counsel for the Appellant that the FIR itself shows that he had high regards for different castes and therefore no offences under the said Act were made out. At one place he has referred to other caste members as his brothers. On 01/02/2023, the notice was issued to the first informant by the same order. Accordingly, the first informant has appeared in this case. He argued in person. He has filed affidavit-in-reply.

2. The FIR is lodged by the Respondent No. 2. He has stated that he was belonging to a Scheduled Caste. On 29/12/2022, he came across a video clip of a news segment. He has described that particular segment. The news anchor was interviewing the present Appellant. At that time, the Appellant had made certain statements, which according to the first informant, fall within the meaning of the provisions of the said Act. The Appellant had stated that on 1st January, his organisation was planning to hold a meeting for paying homage to the Indians

who had fought against the British. There was a reference to Indians who had fought on behalf of the British and they were termed as “traitors”. He further stated that the particular programme which was held at Koregaon-Bhima was disrespectful to those who had fought against the British and thus, should be banned by the Government and that the traitors should not be shown respect. He further stated that it would be an insult to those who had sacrificed their lives for the nation. He went on to say that the “Stambh” was an insult to the martyrs of this country and that the State Government must demolish it. After saying that he added that the Hindus and the Bauddhas were brothers and some political parties were trying to create enmity between them. The further part of his statement was also of the similar nature. On these allegations, the FIR is lodged.

3. Learned Senior Counsel Mr. Apte, appearing for the Appellant made the following submissions.

According to him, the informant was not a member of Scheduled Caste because ‘Bauddha’ is not a Scheduled Caste. He

submitted that the FIR itself mentions that the Appellant did not want any enmity to be created between these two groups. The statement referred to in the FIR attributed to the present Appellant was not against a particular caste. The Appellant's intention was to comment against those who had fought for the British. Even the Appellant did not want any dispute. He wanted unity between the different communities as is evident from his entire statement. He submitted that Buddhism is a religion and not a caste. He relied on the Judgment of a single Bench of this Court in the case of *Mangala Kelkar and Anr. Vs. State of Maharashtra* reported in 1979 Mh.L.J. 599. He further submitted that the Appellant's statement cannot be read out of context. He added that offences under sec. 3(1)(u) and 3(1)(v) of the said Act are not made out.

4. The Respondent No. 2- the first informant appeared and made his submissions. His emphasis was on the fact that by the said statement disrespect was caused to the late persons who are held in high esteem by members of the Scheduled Caste. According to him, the 'Stambh' which is referred to in the FIR was

a symbol of bravery of those who had fought that battle and the informant and others were holding that 'Stambh' in high esteem. He referred to the published speeches of Bharat Ratna Dr. Babasaheb Ambedkar. He particularly referred to the passage at page 104 of his affidavit-in-reply. In that passage, it was mentioned that those who had lost their lives in that battle had their names inscribed on that Jay Stambh. The informant, referred to the particular statement in the FIR which showed disrespect to the 'Stambh'.

5. The Respondent No. 2- first informant relied on his Caste Certificate to show that he belonged to a Scheduled Caste and, therefore, had locus to lodge that FIR. He submitted that the offence under Section 295-A of the Indian Penal Code was not applicable and the Police had deliberately invoked that section at the time of the registration of the FIR only to help the Appellant and provisions of the said Act were not applied.

6. Learned APP supported the submissions made by the

first informant.

7. As far as the objection that the informant does not belong to a Scheduled Caste is concerned; at this stage, the informant has relied on the Caste Certificate and there is no reason to disbelieve that Certificate. Hence, he had locus to lodge that FIR.

8. Section 18 of the said Act reads thus:-

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.— Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

Therefore, the Court has to see whether there were accusation of having committed an offence under the said Act by the present Appellant. In that context, sec. 3(1)(u) and 3(1)(v) are important which read as follows:

“(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes.”

“(v) by words either written or spoken or by any other means disrespects any late person held in

high esteem by members of the Scheduled Castes or the Scheduled Tribes.”

9. The main ingredient of Sec. 3(1)(v) is causing disrespect by spoken words to any late person held in high esteem by members of the Scheduled Caste or Scheduled Tribes. In the present case, as demonstrated by the first informant through the aforementioned passage, the said ‘Stambh’ had names of those who had lost their lives in the battle. They were held in high esteem by members of the Scheduled Caste. The statement by Appellant regarding those who had lost their lives as well as the ‘Stambh’ itself was spoken in a manner which was humiliating, thereby tending to hurt feelings of the members of the Scheduled Castes.

10. In this view of the matter, the ingredients of the section 3(1)(v) of the said Act are squarely attracted; even, if the reference to that Stambh is read in the entire context of the interview given by the present Appellant. Having made that statement, the subsequent statement that, he treated the two

groups as brothers, makes no difference because that particular reference caused sufficient damage attracting section 3(1)(v) of the said Act.

11. In this view of the matter, considering the bar under sec. 18 of the said Act, no protection can be granted to the present Appellant and the Appeal is therefore, dismissed.

12. At this stage, learned senior counsel for the Appellant prayed for extension of protection granted to the Appellant by the previous order. However, at that stage, the first informant was not heard, who made his submissions today based on his affidavit-in-reply and the aforementioned passage. Since the offence is made out as shown by the informant's submissions, no further extension of ad-interim relief can be granted. That prayer is also rejected.

(SARANG V. KOTWAL, J.)