

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 338 OF 2024

Maheebub Ibrahim Shaikh
Versus
The State of Maharashtra And Anr.

...Appellant
...Respondents

....

Mr.Aabad Ponda, Senior Advocate a/w Ms.Susmita Dound i/by
Mr.Tathagat Kamble, Advocates for the Appellant.

Mr.Ashwin R. Kapadnis for the Original Complainant/Respondent No.2.

Mrs.Megha S. Bajoria, A.P.P. for the Respondent No.1 – State.

A.C.P Mr. Shashikiran Kashid, Colaba, Mumbai, present.

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CORAM : N. R. BORKAR, J.
DATE : 6th MAY, 2024.

P.C.:

1. The Appellant who is an accused in Crime No.275 of 2023 registered with Marin Drive Police Station, Mumbai for the offences punishable under Sections 294, 323, 324, 506(2), 504 r/w Section 34 of Indian Penal Code (for short “IPC”) and Sections 3(1)(r) & 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short “SC/ST (Prevention of Atrocities) Act”] has filed this appeal against the order dated 27.3.2024 passed by the Additional Sessions Judge, Gr. Bombay in Anticipatory Bail Application No. 606 of 2024. By the order impugned, the learned

Additional Sessions Judge has rejected the application filed by the present appellant for anticipatory bail.

2. I have heard the learned Senior Counsel for the Appellant, learned A.P.P. for the Respondent No.1-State and the learned counsel for Respondent No.2.

3. The aforesaid crime came to be registered at the instance of respondent No.2/complainant. The allegations against the present Appellant are that on the date of incident which took place on 27.12.2023, dispute arose between the Appellant and Respondent No.2 on account of sharing of the room in MLA Hostel. It is alleged that during the said dispute, the Appellant who was known to Respondent No.2 and was aware that Respondent No.2 belongs to Scheduled Tribe, had hurled caste related abuses on the Respondent No.2 and assaulted him by wooden stick.

4. The learned Senior Advocate submitted that on the date of incident, dispute arose between the Appellant and Respondent No.2, as Respondent No.2 wanted to stay in the room which was already occupied by the Appellant and his friends. It is submitted

that the Appellant was not knowing the Respondent No.2 and therefore there arises no question of abusing him on his caste. It is submitted that there is a cross FIR for the offences punishable u/s 294, 323, 324, 392, 504 and 506 read with 34 of the Indian Penal Code. It is submitted that considering the overall facts and circumstances Appellant may be released on anticipatory bail.

5. On the other hand, learned APP for the Respondent/State and learned Counsel for Respondent No.2 submit that there are specific allegations against the present Appellant that he had abused the Respondent No.2/Complainant on his caste. It is submitted that there are two N.C. complaints against the Appellant. It is submitted that considering the nature of offence, the Appellant may not be released on anticipatory bail.

6. I have perused the FIR and statements of witnesses. The Appellant and Respondent No.2 are not resident of the same place. The Respondent No.2 therefore ought to have disclosed the reason as to how his caste was known to the Appellants. Apart from it, the statements of independent witnesses are silent on the point of alleged caste abuses. Considering the overall facts and

circumstances of this case, I am inclined to allow the present appeal.

ORDER

- i. Criminal Appeal No. 338 of 2024 is allowed;
- ii. The order dated 27.03.2024 passed by the Sessions Court in Criminal Anticipatory Bail Application No.606 of 2024 is quashed and set-aside.
- iii. In the event of arrest of the Appellant in connection with Crime No.275 of 2023 registered with Marine Drive Police Station, Mumbai for the offences punishable under Sections 294, 323, 324, 506(2), 504 r/w Section 34 of Indian Penal Code, Sections 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989, he be released on bail on executing P. R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- iv. The Appellant shall attend the concerned police station as and when called by the Investigation Officer and shall cooperate in the investigation.
- v. Appeal stands disposed of accordingly.

(N. R. BORKAR, J.)