



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

CRIMINAL APPEAL NO. 868 OF 2023

Vajir Husain Panasare

..Appellant

VS.

1. The State of Maharashtra

2. Pankaj Eknath Nikude

..Respondents

Ms.Anita A. Agarwal for the Appellant.

Mr. Ravindra S. Pachundkar, for Respondent No.2.

Ms. S. D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 29, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the appellant. Learned APP and learned counsel for the respondent no.2 opposed the appeal.

2. This is an appeal for quashing and setting aside the impugned order dated 17/07/2023 rejecting the anticipatory bail application of the appellant passed by the trial Court in connection with C.R. No. 215 of 2023 registered with Jejuri police station, Pune for the offences punishable under sections 326, 324, 504, 506 of the Indian Penal Code, 1860 and under sections 3(1)(r) & 3(2)(va) of the Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Atrocities Act"). The date of the FIR is 07/06/2023. The date of the incident is 07/06/2023. This Court vide order dated 11/08/2023 granted interim protection to the appellant. The relevant portion of the said order reads thus :

"2. By this appeal, preferred under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellant seeks his enlargement on bail in connection with C.R. No.215 of 2023, registered with the Jejuri Police Station, Pune, for the alleged offences punishable under Sections 326, 324, 504, 506 of the Indian Penal Code and under Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short SC/ST Act).

3. Learned counsel for the appellant submits that the dispute between the parties is of civil nature and it is out of this dispute that the incident in question took place on 7th June 2023. She submits that the respondent no. 2 (original complainant) had borrowed money from the appellant in 1997 and accordingly the complainant kept his land with the appellant, in lieu thereof. Visarpavti was also issued by the complainant in favour of the appellant.

4. It appears that there are several cases, both criminal and civil pending between the parties interse. According to the learned counsel for the appellant, the incident took place on 7th June 2023, when he had informed that the respondent no. 2 had trespassed into his property, pursuant to which the incident took place. She submits that taking the prosecution case as it stands no offences under the SCST Act are disclosed and as such, the bar of section 18 of the SCST Act would not apply. She submits that initially an offence was registered

under section 324, however, subsequently, section 326 came to be added.

5. Learned counsel for the respondent no. 2 opposed the grant of interim relief. He states that he has filed an intervention application. Since we have impleaded respondent no. 2 as party respondent in the aforesaid appeal, liberty is granted to the learned counsel for the respondent no. 2 to file an affidavit in reply, if he so desires.

3. The incident in question happened in an agricultural field which according to the respondent no.2 was encroached systematically by the appellant. It is the case of the respondent no.2 that for the past 20 years, the appellant is trying to encroach the respondent no.2's agricultural field. On the other hand, it is the case of the appellant that he is in possession of the portion which the respondent no. 2 claims to be his on the basis of valid and subsisting agreement in his favour. The suit for specific performance is pending before the Civil Court, Pune filed by the appellant against the respondent no.2. On the date of the incident, the respondent no.2 was informed that the agricultural field on which he claims ownership was being dug up by the appellant for the purpose of constructing a road. Respondent no.2 therefore went to the spot and questioned the appellant. It is alleged that the appellant

assaulted the respondent no.2 with plastic pipe, fist and kick blows.

4. According to learned APP and learned counsel for the respondent no.2, respondent no. 2 suffered injuries, one of which is loss of tiny fragment of left dentral incisor teeth causing tiny U shaped defect. The impression reported by the Department of Radiodiagnosis and Imaging, Sassoon General Hospital, Pune is the fracture of left central incisor as described. Learned counsel for the respondent no.2 submitted that the statement of the complainant clearly reveals that the respondent no. 2 was abused by the appellant in the name of his caste. It is submitted that the incident happened in public view. It is submitted that there are independent witnesses to support the factum of the appellant having abused the respondent no.2 in the name of his caste. Learned counsel for the respondent no.2 relied on the decision of the Supreme Court in ¹**Swaran Singh and ors. Vs. State through Standing Counsel and anr.** to submit that the incident has happened within the public view and therefore the appellant having abused the respondent no.2 in the name of his caste, constitutes the

1 2008 AIR SCW 5758

alleged offence under the aforesaid sections and hence, the bar under section 18 of the Atrocities Act will apply. It is further submitted that the appellant is a retired police officer and is exerting pressure on the respondent no.2 through himself and his friends and acquaintances.

5. Heard learned counsel.

6. I have gone through the statements of the complainant, the respondent no.2 as well as the witnesses. There are several litigations pending between the appellant and the respondent no.2 over the dispute relating to the agricultural field on which the incident is alleged to have taken place. It is the respondent no.2 who had gone to the agricultural field upon being told that the appellant is digging up the field. It is alleged that the appellant used abusive words in the name of respondent no.2's caste. Prima facie, having regard to the disputes and differences between the parties the possibility of false implication cannot be ruled out. Whether there was an intent to insult or humiliate respondent no.2 by using words in the name of his caste will depend upon the context in which it were used. Prima facie, the intention does not appear to insult

the respondent no.2 in the name of his caste. Learned counsel for the appellant on instructions submitted that the appellant is a resident of Pune and will not enter the area of Jejuri except for the purpose of attending the Court proceedings with the prior permission of the trial Court. Learned APP submitted that the investigation is almost over and the charge-sheet will be filed shortly. In my opinion, the appellant can be granted anticipatory bail by confirming the interim order by imposing conditions. Hence, the following order :-

ORDER

- (a) The appeal is allowed.
- (b) The impugned order dated 17/07/2023 passed by the trial Court is quashed and set aside.
- (c) In the event of arrest in connection with C.R.No.215 of 2023 registered with Jejuri police station, Pune, the appellant-Vajir Husain Panasare shall be released on bail on his furnishing P.R. bond to the extent of Rs.25,000/-with one or more sureties of the like amount.
- (d) The appellant shall report to the investigating officer of the concerned police station as and when called and co-operate with the investigation.

(e) The appellant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(f) The appellant shall not enter the area of Jejuri without permission of the trial Court except for the purpose of attending the Court proceedings and attending the investigating officer.

(g) It is open for the appellant to make an appropriate application to the trial Court for modification of the condition to enter the area of Jejuri after filing of the charge-sheet which shall be considered on its own merits and in accordance with law depending on the threat perception the respondent no.2 faces from the appellant. The appellant shall not tamper with or threaten the witnesses.

(h) It is made clear that the observations made by this Court in the course of this appeal are limited to deciding this appeal and for the purpose of considering the application for grant of pre-arrest bail and shall not influence the trial Court while proceeding with the trial on merits. The trial shall be proceeded on its own merit and in accordance with law on the basis of the evidence that may be adduced without being influenced by any observations made in course of deciding this appeal.

6. The appeal is disposed of.

(M. S. KARNIK, J.)