

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 238 OF 2024****Vishal Ankkanna Shinde****....Appellant****V/s.****The State of Maharashtra and Anr.****....Respondents**

Mr. Veerdhawal Deshmukh *i/b S. P. Hulyalkar, for the Appellant.*

Ms. Shilpa K. Gajare – Dhumal, *APP for Respondent-State.*

Mr. Ankur Pahade, *Appointed Advocate for Respondent No.2*

Mr. Deepak Barge, API, Hadapsar Police Station Pune.

CORAM : SANDEEP V. MARNE, J.

Date : 17 OCTOBER 2024.

P.C. :

1) This is an Appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging order dated 15 February 2024 passed by the learned Special Judge, Pune, rejecting the application filed by the Appellant for grant of pre-arrest bail in connection with C.R. No.154 of 2024 for the offences punishable under provisions of Sections 323, 324, 143, 145, 147, 149, 504 and 506 of the Indian Penal Code, 1860 and Sections 3(1)(r) and 3(1)(s) of the SC & ST Act.

2) The prosecution story as reflected from the FIR statement shows that a free fight has taken place between two groups. The statement alleges that the fight took place on account of bursting of fire crackers by the Complainant and his friends when the accused arrived at the scene, hurled caste-based abuses and pelted stones. The caste-based abuses are attributed solely to the Appellant, which is a reason why the learned Special Judge has rejected the Anticipatory Bail Application of the Appellant while releasing the other accused on pre-arrest bail.

3) There appears to be cross FIRs in the present case. As against the FIR lodged at the instance of the Complainant, there is a separate FIR lodged on 23 January 2024 at the instance of Ram Raju Lakde, from the group of Appellant. Additionally, there appears to be one more FIR lodged at the instance of Police Constable on 23 January 2024 at 16.41 p.m. in which accused from both the groups are named. Therefore, this appears to be of case of free fight between the members of two groups. The FIR lodged at the instance of Police Constable does not reflect any caste-based abuses. However, FIR lodged at the instance of the Complainant specifically alleges caste-based abuses ascribed to the Appellant.

4) The learned counsel appearing for the Appellant, has submitted that the caste-based slurs are not made in the public view. He would submit that the alleged witnesses have arrived at the spot after the caste-based slurs were made by the

Appellant. So far as presence of the friends of the Complainants are concerned he has submitted that caste-based abuses made in front of friends of the Complainant would not fulfill ingredients of Section 3(1)(r) of the SC & ST Act and has placed reliance of Judgment of the Apex Court in ***Hitesh Verma Vs. State of Uttarakhand and Anr.***¹ and ***Shajan Skaria Vs. The State of Kerala and Anr.***²

5) On the other hand, Mr. Pahade, the learned counsel appearing for Respondent No.2 as well as Ms. Gajare, the learned APP appearing for Respondent No. 1-State has contended that hurling of caste-based abuses in front of friends and known persons would clearly constitute of ingredients of Section 3(1)(r) of the SC & ST Act. In my view, it would be too premature at this stage to give any ruling on the said aspect and this is something which needs to be decided during the course of the trial.

6) The Appellant is on interim protection granted by this Court on 7 March 2024. The Investigations *qua* other accused are already complete and charge-sheet has been filed. Appellant can be directed to remain present before Investigating Officer for the purpose of ensuring completion of investigations against him.

7) In that view of the matter, interim protection granted in favour of the Appellant deserves to be made absolute.

1 (2020) 10 SCC 710

2 Criminal Appeal No.2622 of 2024 decided on 23 April 2024.

8) I accordingly proceed to pass the following order:-

(a) Order dated 15 February 2024 passed by the learned Special Judge is set aside.

(b) Interim protection granted in favour of the Appellant on 7 March 2024 is made absolute subject to the following conditions:-

(a) The Appellant shall remain present before the Investigating Officer on 23 and 24 October 2024 between 11 and 2 p.m. and shall co-operate with conduct of investigations.

(b) The Appellant shall not contact or threaten the complainant and all other witnesses associated with the case nor shall tamper with the evidence.

(c) The Appellant shall attend every date before the Special Judge, unless exempted.

(d) The Appellant shall not enter the locality where the Complainant and his family members reside.

9) With the above directions, the Appeal is allowed and disposed of.

[SANDEEP V. MARNE, J.]

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