

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

**CRIMINAL APPEAL NO.401 OF 2024
WITH
CRIMINAL APPEAL NO.323 OF 2024
WITH
CRIMINAL APPEAL NO.324 OF 2024
WITH
CRIMINAL APPEAL NO.321 OF 2024
WITH
CRIMINAL APPEAL NO.322 OF 2024**

Vaishali Arun Ahire

...Appellant

vs.

The State of Maharashtra & Ors.

...Respondents

....

Mr. Piyush Toshniwal i/b Mr. Gaurav Nankar, *for the Appellant.*

Ms. Shilpa G. Talhar, APP, *for Respondent No.1/State.*

Ms. Priyanka H. Chavan, *appointed Advocate for Respondent Nos.2 and 3 in Criminal Appeal Nos.324 of 2024, 401 of 2024 and Respondent No.2 in Criminal Appeal Nos.321 of 2024 and 323 of 2024.*

Mr. Sachin Gite *for Respondent No.2 in Criminal Appeal No.322 of 2024.*

....

CORAM : SANDEEP V. MARNE, J.

DATE : 2 JULY 2024

P.C.:

1 These Appeals are filed under provisions of section 14A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging orders dated 2 February 2024, 9 February 2024 and 13 February 2024 by the Additional Sessions Judge-2, Nashik, allowing the Applications filed by the Accused-Respondents and granting them pre-arrest bail. The Appellant accordingly seeks cancellation of bail granted in favour of the Respondents-Accused.

2 Perusal of the FIR indicates that there exist some dispute over the concerned land between the owner Shri Victor Edwin John and Shri Suhas Dwarkanath Kande. The First Informant/Appellant is the wife of Security Guard employed at the concerned land by Shri Kande. It is alleged that on 25 January 2024 the accused barged into concerned land as well as the house in which the Appellant resides for the purpose of taking unauthorized possession thereof and threatened and abused the Appellant if she created any obstruction in the said act. When the Appellant attempted to make a telephonic call to her husband, one of the unknown persons snatched the mobile phone. That after the said persons came out of the house the Appellant changed her clothes and came out when she noticed that out of the persons present at the scene, one man had video recorded not just the house but also the act of the Appellant changing her clothes on the mobile phone. When she came out of the house, she noticed 15 to 20 persons with various weapons and equipment and she identified couple of accused who allegedly hurled abuses with reference to her caste. It is further alleged that she was assaulted and her *mangalsutra* was snatched. These are the broad allegations in the FIR. The learned Additional Sessions Judge was persuaded to allow the applications filed by Respondents-accused for pre-arrest bail by passing order on 2 February 2024 in respect of the accused No.1 Yogesh John and accused No.2 Pavlas John, three orders dated 9 February 2024 in the cases of accused No.2 Kavita John, accused No.5-Ribeka Misal, accused No.4-Dinesh John and accused No.6-Wilson Mohite, as well as order dated 13 February 2024 in the case of accused No.7-Suresh Sutar. Aggrieved by the said orders dated 2 February 2024, 9 February 2024 and 13 February 2024 the Appellant has filed the present Appeals challenging the said orders and

seeking cancellation of pre-arrest bail granted in favour of the Respondents-accused.

3 I have heard Mr. Toshniwal, the learned counsel appearing for the Appellant who would submit that the impugned orders passed by the learned Sessions Judge suffer from the vice of perversity. That the learned Judge has glossed over the fact that the case involves offences of house trespass under section 452 of the Indian Penal Code carrying sentence of 7 years and robbery under section 392 of the Indian Penal Code carrying sentence of 10 years. That there is a specific allegation of robbery of gold ornament of the Appellant. Presence of 15 to 20 persons at the site is specifically reflected in the FIR thereby making it clear that the crime and particularly hurling of abuses has taken place in public view. He would submit that there is also allegation of video recording of the Appellant while she was changing clothes. The persons present at the site were carrying various weapons thereby indicating a pre-planned conspiracy to commit crime. That all the accused have been named in the FIR and specific role has been ascribed therein.

4 Mr. Toshniwal would further rely upon provisions of section 18 and 18A of the SC & ST Act in support of his contention that since a demonstrable case of commission of offences under SC & ST Act is made out, the bar for grant of pre-arrest bail under the said provisions is clearly attracted in the present case. He would further submit that the accused are threatening the Appellant even after the incident, which is apparent from the

Complaint dated 30 January 2024 lodged by her. She would submit that no case was made out for grant of pre-arrest bail to any of the accused.

5 *Per contra*, Ms. Chavan, the learned counsel appearing for the Respondents-accused in Criminal Appeal Nos.321 of 2024, 323 of 2024, 324 of 2024 and 401 of 2024 would oppose the Appeals submitting that no case is made out for exercise of jurisdiction by this Court to interfere in the impugned orders passed by the learned Additional Sessions Judge after considering the entire material on record. In absence of any perversity in the findings recorded by the learned Judge, this Court would be loathe in the same. Referring to FIR Ms. Chavan would submit that the allegations therein clearly indicate that the alleged utterances with reference to the caste are made inside the house thereby showing that the same are not made in public view. That the Complainant herself has not indicated in a statement as to who exactly uttered those words. That the allegations are omnibus in nature without ascribing any specific role to any particular accused. That there is delay in lodging complaint as the incident allegedly occurred between 10.30 a.m. to 10.45 a.m. whereas the FIR is lodged at 9 p.m. That the entire incident has a background of civil dispute between Mr. Victor John and Mr. Subhash Kande. That the Appellant is not even connected with the said land or ownership dispute relating thereto and is merely wife of Security Guard employed there at.

6 So far as the act of recording of video is concerned Ms. Chavan would submit that the statement of the Appellant does not name the exact person

who allegedly recorded the said video. She would submit that investigations into the crime are already complete though charge-sheet is yet to be filed. Ms. Chavan would pray for dismissal of the Appeals.

7 Mr. Gite, the learned counsel appearing for the Respondent No.2 in Criminal Appeal No.322 of 2022 would adopt the submissions canvassed by Ms. Chavan. Additionally, he would submit that his client Wilson alias Lucky Mohite is not even related to the family of Mr. Victor John and that his name has been unnecessarily implicated in the entire episode.

8 I have also heard Ms. Talhar, the learned APP appearing for Respondent No.1/State.

9 After having considered the submissions canvassed by the learned counsel appearing for the parties and after going through the FIR, it is seen that one of the accused is Suresh Sutar belongs to scheduled caste. The copy of his caste certificate is placed on record by Ms. Chavan. The allegation in the FIR is that all the seven accused entered the house and hurled abuses at the Appellant with reference to her caste. The allegation indicates presence of Suresh Sutar and hurling of abuses is apparently attributed to Suresh Sutar as well. It therefore *prima facie* becomes difficult to believe that one member of Scheduled Caste would abuse another member of Scheduled Caste with reference to her caste.

10 Furthermore, the FIR does not indicate the exact persons who allegedly hurled abuses with reference to the caste towards Appellant.

Obviously all seven persons cannot speak at same time and hurl same abuses at the Appellant.

11 So far as the act of recording of the video is concerned, the FIR alleges that out of 15 to 20 unknown persons, one man out of them recorded the video. Thus the exact person who allegedly recorded the video is also not named in the FIR.

12 The FIR would clearly indicate that the allegations against the seven accused are omnibus in nature. There is no dispute to the position that there exist civil dispute with relating to land in question between Mr. Victor John and Mr. Suhash Kande. Appellant or her husband is not really concerned with the said dispute. Appellant's husband merely works as Security Guard at the concerned land. It therefore prima facie becomes difficult to believe that accused had any personal motive or animosity towards the Appellant for committing the crime alleged.

13 So far as the bar under provisions of sections 18 and 18A of the SC & ST Act is concerned, by now it is well settled position of law in the event of non-disclosure of prima facie case against the accused, the bar under sections 18 and 18A of the SC & ST Act would not apply. Reference in this regard can be made in the judgments of the Apex Court in ***Dr. Subhash Kashinath Mahajan vs. The State of Maharashtra & Anr.***, (2018) 6 SCC 454 and ***Prathvi Raj Chavan vs. Union of India and Ors.*** in ***Writ Petition (C) No.1015 of 2018***.

14 In my view the Additional Sessions Judge has properly considered the material on record for the purpose of allowing the applications for pre-arrest bail filed by the seven accused. The orders passed by the Additional Sessions Judge do not suffer from the vice of perversity. Therefore, I do not find any reason to interfere in the orders passed by the Additional Sessions Judge. Appeals, being devoid of merits, are dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

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