

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

CRIMINAL APPEAL NO.477 OF 2024

Rajesaheb Masalkar

....Appellant

V/s.

The State of Maharashtra and Anr.

...Respondents

Mr. Vivek Punjabi *for the Appellant.*

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

Ms Manish Devkar, *appointed Advocate for Respondent No.2.*

*Ms Shobha Pise, ACP, Tardeo Division, Nagpada Police Station,
present.*

CORAM : SANDEEP V. MARNE, J.

Dated : 8 October 2024.

P.C.:

1) This is an appeal under the provisions of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST Act**) challenging the order dated 20 April 2024 passed by the learned Additional Sessions Judge, Mumbai, rejecting the application filed by the Appellant for grant of pre-arrest bail in connection with Crime No.263 of 2024 registered with Nagpada Police Station, Mumbai, for the offences punishable under Sections 354, 323, 509 and 504 r/w 34 of the IPC, 1860 and Sections 3(1)(s), 3(1)(u), 3(1)(w), 3(1)(p) and 3(1)(z) of the SCST Act.

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2) I have heard Mr. Punjabi, the learned counsel appearing for the Appellant, Ms Devkar, the learned counsel appointed by the Court to represent Respondent No.2 from Legal Aid Panel and Ms Talhar, the learned APP for Respondent No.1-State.

3) Perusal of the FIR statement would indicate that the allegations relating to caste based utterances are made against accused Sanobar Mashalkar and Anam Qureshi. So far as the present Appellant is concerned, there are no allegations of caste based abuses. For Appellant the role ascribed is pushing -Jayashree on the chest on two or three occasions. Except this allegation, it appears that the FIR statement itself shows that the Appellant had actually intervened in the fight between ladies and had attempted to pacify them. Since caste based abuses are not attributed to the Appellant, offences under provisions of Section 3(1) (s) and 3(1)(w) would not be attracted in the present case. It appears that for Appellant, Section 3(1)(w)(i) is sought to be attracted. However, *prima facie* it appears that the alleged act of the Appellant is not with an intention of touching the woman sexually, which is the essential ingredient for attracting offence under Section 3(1)(w)(i). The Appellant is an elderly person over 80 years of age. He is on interim protection granted by this Court since 7 May 2024. In that view of the matter, interim protection granted in favour of the Appellant deserves to be absolute. Appeal accordingly succeeds and I proceed to pass following order:-

- (i) Order dated 20 April 2024 passed by the learned Additional Sessions Judge, Mumbai, is set aside.
- (ii) Interim protection granted by this Court in favour of the Appellant is made absolute.
- (iii) The Appellant shall remain present before the Investigating Officer on 21 October 2024 and 22 October

2024 between 11.00 a.m. to 2.00 p.m and shall co-operate with the conduct of investigations.

- (iv) Appellant shall not contact the Complainant or any other witnesses associated with the case nor shall tamper with the evidence.
- (v) The Appellant shall keep the Investigating Officer informed of his current addresses and mobile contact numbers, and /or change of residence or mobile details, if any, from time to time.
- (vi) Appellant to attend each date of hearing.

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

[SANDEEP V. MARNE, J.]