

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 553 OF 2024

Salim Mainuddin Shaikh

... Appellant

Versus

The State of Maharashtra And Anr.

... Respondents

Mr. Anil S. Kamble *for the Appellant.*

Ms. Shilpa K. Gajare-Dhumal, *APP for the Respondent No.1-State.*

Mr. M. Taha Khan *a/w Mr. Amol Lokhande for Respondent No.2.*

Mr. Shivram Padwal, *API Hillline Police Station, Thane is present.*

CORAM : SANDEEP V. MARNE, J.

DATE : 23 AUGUST 2024.

P.C. :

1) This Appeal is filed under provisions of 14-A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**), challenging the Order dated 8 May 2024 passed by Additional Sessions Judge, Kalyan rejecting the application filed by the Appellant seeking pre-arrest bail in connection with Crime Register No. 145 of 2024 registered with Hillline Police Station, Thane for offences punishable under Sections 354, 323, 504, 506 read with Section 34 of Indian Penal Code,

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1860 and Sections 3(1)(r), 3(1)(s), 3(1)(u), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the SC & SC Act.

2) I have heard Mr. Kamble, the learned counsel appearing for Appellant, Mr. Khan, the learned counsel appearing for Respondent No.2 and Ms. Shilpa Gajare-Dhumal, the learned APP appearing for Respondent No.1-State.

3) After having considered the submissions canvassed by the learned counsel appearing for parties and after going through the relevant records of the case, it is seen that the statement of the Complainant recorded on 25 January 2024 is essentially in two parts. The first part describes the role played by Accused No. 1–Aslam Shaikh where the said Accused has allegedly abused and assaulted Complainant’s brother. When the Complainant attempted to intervene, Accused No.1–Aslam has also abused and assaulted the Complainant. Accused No.1-Aslam is also accused of abusing the Complainant with reference to her caste. After the Part-I of the incident involving the alleged acts of Accused No. 1-Aslam was over, it appears that the Complainant noticed Appellant-Salim Shaikh video recording the incident with his mobile phone. Therefore, the Complainant snatched the mobile phone from the Appellant and as a reaction the Appellant allegedly abused the Complainant and made gestures outraging her modesty. *Prima facie*, there are no caste based abusing or utterances on the part of the Appellant towards Complainant or her brother.

4) It appears that, a separate Appeal was filed by Accused No.1-Aslam, which came to be later withdrawn and Accused No.1-Aslam accordingly, surrendered before the police on 21 August 2024 and is now under custody. So far as role played by the Appellant is concerned, the same appears to be *prima facie* in second part and according to Mr. Kamble, the same is merely is a reaction to the action initiated by the Complainant. *Prima facie*, therefore, it appears that Appellant voluntarily did not perform any act when Part-I of the incident was going on where Accused No.1-Aslam was assaulting Complainant and her brother. If Complainant was not to snatch the mobile phone from the Appellant possibly he would not have been an accused in the case.

5) What is also relevant to note is the fact that immediately after the incident, Complainant's brother lodged N.C.R. at 00.32 hours on 15 January 2024 only against Aslam and in the version described by Complainant's brother, the Appellant is not named. If the Appellant really had played any role in the crime, and if police noted the N.C.R. at the behest of Complainant's brother against Aslam, it is incomprehensible as to why the police would leave out Appellant-Salim while noting the said NCR. Mr. Kamble would highlight the delay of 12 days in lodging of FIR by the Complainant. Mr. Khan is however quick enough to respond that the police was not registering the FIR and that the Complainant had filed her Complaint on 15 January 2024 itself for registration of FIR. He would submit that delay in lodging of FIR is not attributable to Complainant. Be that as it may. Even if the aspect of delay is to be ignored, after dividing the entire incident in two parts, it is seen that the role of the Appellant is attributable only to the second part of the incident.

6) Ms. Gajare-Dhumal has highlighted antecedents of the Appellant. It appears that as of now there are three antecedents against the Appellant, pertaining to the years 2014 and 2015 and the third antecedent is of the year 2023, which involves offences under SC & ST Act as well. In ordinary course, this Court would have been loath in granting anticipatory bail to an accused who has three antecedents. However, in the present case the Court cannot ignore the limited role ascribed to the Appellant while deciding his Application for anticipatory bail.

7) Since caste-based abuses or utterances are not ascribed to the Appellant the bar under Section 18 of SC & ST Act would not be attracted in the present case.

8) Considering the over all conspectus of the case, I am of the view that Appellant deserves to be granted anticipatory bail as his custodial interrogation does not appear to be necessary.

9) The Appeal accordingly succeeds and I proceed to pass the following order:

(a) The Order dated 8 May 2024 passed by Additional Sessions Judge, Kalyan is set aside.

(b) In the event of arrest of the Appellant in Crime Register No. 145 of 2024 registered with Hillline Police Station, Thane for offences punishable under Sections 354, 323, 504, 506 read with Section 34 of

Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(1)(u), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the SC & SC Act., he shall be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(c) The Appellant shall appear before the Investigating Officer on 28, 29 and 30 August 2024 between 11.00 to 2.00 p.m. and shall co-operate with the conduct of investigations by handing over his mobile phone, as well as by undergoing medical examination.

(d) Appellant shall not attempt to contact Complainant, her family members or any witnesses associated with the case in any manner.

(e) Appellant shall attend Trial Court regularly unless exempted from personal appearance.

(f) Appellant shall not pressurize the informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.

(g) The Appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Trial Court as well as to the concerned Police Station in writing.

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

[SANDEEP V. MARNE, J.]