

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 621 OF 2024

Kabir Mohammad Valiakath

... **Appellant**

Versus

The State of Maharashtra And Anr

... **Respondents**

Mr. Pranav Pokale a/w *Mr. Chinmay Sawant i/b Mr. Imran Mujawar*
for the Appellant.

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

Mr. Sushan Mhatre appointed for Respondent No.2.

Mr. Atul Shete, API, Pimpri Police Station is present.

CORAM : SANDEEP V. MARNE, J.

DATE : 21 NOVEMBER 2024.

P.C. :

1) This is an Appeal filed under Section 14-A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging the Order dated 7 May 2024 passed by the learned Special Judge (Cases under SC & ST POA Act), Pune rejecting the Application filed by the Appellant for grant of pre-arrest bail in connection with Crime No.206 of 2024 registered with Taloja Police Station, Navi Mumbai for offences punishable under Sections 504, 506 and 509 of the Indian Penal Code and under Sections 3(1)(p) and 3(1)(q) of SC & ST Act.

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

3) The Appellant is granted interim protection by this Court by Order dated 26 June 2024 by making following observations:

3) Perusal of the FIR would indicate that the alleged abuses huled to the accused have occurred in the private office. Prima facie, the FIR does not indicate that the alleged utterances are made in public view. Furthermore, the offence under Section 3(1)(p) is added when infact no suit, criminal or other proceedings is yet lodged by the Appellant against the First informant. In that view of the matter, the interim protection deserves to be granted to the Appellant.

4) Though, the caste based utterances are alleged to have been made in presence of Mr. Khalid Mujawar and Mr. Akil Mujawar, the same are admittedly made in the office of the Appellant, which was not in the public view. Also Sections 3(1)(r) and 3(1)(s) were initially not included in the FIR and what was alleged against the Appellant in the FIR were offences under Sections 3(1)(p) and 3(1)(q) of the Act. Why offences under Sections 3(1)(r) and 3(1)(s) were initially not included in the FIR is incomprehensible. The learned APP would point out that Sections 3(1)(r) and 3(1)(s) have been replaced in place of Sections 3(1)(p) and 3(1)(q) of the Act on 24 April 2024. Be that as it may. It is difficult to believe that any offence under provisions of SC & ST Act by making caste based utterances with a view to humiliate the Complainant in any place within public view is made out.

5) In absence of making out a *prima facie* case for offences under Sections 3(1)(r) and 3(1)(s) on account of caste based utterances being made in the office of the Appellant, bar under provisions of Section 18 of the SC & ST Act would not be attracted in the present case. The learned counsel appearing for the Appellant would submit that the Appellant has remained present before the Investigating Officer as directed by this Court and has co-operated with conduct of investigations. In my view, therefore custodial interrogation of the Appellant at this stage would not be warranted.

6) I accordingly proceed to pass the following order:

a) Order dated 7 May 2024 passed by the learned Sessions Judge, Pune is set aside.

b) Interim protection granted in favour of the Appellant by order dated 26 June 2024 is made absolute subject to following conditions :

i) Appellant shall attend each date of hearing before the learned Sessions Judge unless exempted from personal appearance.

ii) Appellant shall not contact the Complainant or any other witnesses associated with the case nor shall tamper with the evidence.

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

[SANDEEP V. MARNE, J.]