

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 885 OF 2024

Shailesh Sanjay Ghadge

... **Appellant**

Versus

The State of Maharashtra And Anr

... **Respondents**

Mr. Aniket Nikam *i/b Mr. Amit Icham a/w Ms. Pratila Jadhav, Mr. S. Patil & Mr. Dusyant Digamber for the Appellant.*

Ms. Rashmi S. Tendulkar, APP *for Respondent No.1-State.*

Mr. Swaraj Jadhav *appointed for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

DATE : 21 NOVEMBER 2024.

P.C. :

1) This Appeal is filed under provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**), challenging the Order dated 8 August 2024 passed by the Learned Special Judge-1, Barshi, rejecting the application filed by the Appellant seeking pre-arrest bail under Section 438 of Code of Criminal Procedure in connection with Crime Register No. 402 of 2024 registered with Karmala Police Station for the offences punishable under Sections 324, 504 and 506 of the Indian Penal Code and under Section 3(1)(r)(s), 3(2)(va) of the SC & ST Act.

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

3) While granting interim protection in favour of the Appellant by Order dated 26 August 2024, this Court made following observations:

"Perusal of the FIR would *prima facie* indicate that the allegations of caste based abuses are vague. *Prima facie*, it indicates that the said utterances are not made in public place. So far as offences punishable under the Indian Penal Code are concerned, the offences are bailable. Perusal of the injury certificate would indicate that the Complainant has apparently suffered only simple injury. In my view, therefore, bar under provisions of Section 18 of the SC & ST Act would not be attracted in the present case in view of absence of a *prima facie* case. The Appellant therefore deserves to be granted Interim protection till Respondent No.2 is heard in the Appeal."

4) Perusal of the FIR would indicate that in respect of the second incident, which has allegedly occurred at 6.45 pm., no person was present when the alleged caste based utterances were made by the Appellant by standing outside the house of the Complainant. As observed in the Interim Order dated 26 August 2024, the IPC offences are bailable. Since caste based utterances are *prima facie* not made in presence of any person, it is difficult to hold at this stage that a *prima facie* case of commission of offences under provisions of SC & ST Act is made out.

5) Mr. Jadhav would highlight registration of C.R. No. 861 of 2023 by the Complainant against Appellant in the past which includes offences under provisions of Sections 3(1)(r)(s), 3(1)(w)(ii) and 3(2)(va) of SC & ST Act. He would submit that despite registration of one case being C.R. No. 861 of 2023, the Appellant has shown audacity to indulge in one more crime involving caste based abuses and assault.

6) Mr. Nikam after taking instructions would submit that the Complainant is deliberately implicating the Appellant in multiple cases of atrocities and he would submit that appropriate conditions be imposed on the Appellant to ensure that no further cases are registered against him.

7) In my view, since *prima facie* case of commission of offence under the SC & ST Act is not made out, the bar under provisions of Section 18 of the Act would not apply in the present case. In that view of the matter, interim protection granted in favour of the Appellant deserves to be made absolute.

8) I accordingly proceed to pass the following order:

a) Order dated 8 August 2024 passed by the Learned Special Judge-1, Barshi is set aside.

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

- i) The Appellant shall remain present before the Investigating Officer on 3, 4 and 5 December 2024 between 11.00 a.m. to 2.00 p.m. and shall co-operate with the investigations.
 - ii) Appellant shall not contact the Complainant or any other witnesses associated with the case nor shall tamper with the evidence.
 - iii) Appellant shall report before the police station twice a week during conduct of the trial with a view to ensure that he does not indulge in any further crimes against the Complainant.
 - iv) Appellant shall attend each date of hearing before the Court unless exempted from personal appearance.
- 9) With the above directions, the Appeal is **allowed and disposed of.**

[SANDEEP V. MARNE, J.]