

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 950 OF 2024

Sunil Lahu Bhoir And Anr.

... **Appellants**

Versus

The State of Maharashtra And Anr

... **Respondents**

Mr. Amit Icham *for the Appellant.*

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

Mr. Kishor Walanju a/w Mr. Trushant Arde *for Respondent No.2.*

Mr. Ramesh Sangle PSI, Mr. Nilesh Pawar HC, Taloja Police Station, Navi Mumbai 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 13 August 2024 passed by the learned Additional Sessions Judge, Panvel rejecting the Application filed by the Appellants for grant of pre-arrest bail under provision of Section 438 of Code of Criminal Procedure, 1973 in connection with Crime No.237 of 2024 registered with Taloja Police Station, Navi Mumbai for offences punishable under Sections 352, 509, 504, 506 and 34 of the Indian Penal Code and under Section 3(1)(s) of SC & ST Act. It appears that subsequently Section 354 of IPC as well as Sections 3(1)(r), 3(1)(s), 3(2)(va) and 3(1)(w)(ii) of SC & ST Act have also been added.

2) Perusal of the FIR statement would indicate that one Sumit Santosh Bhoir had caused damage to the step in front of the Complainant's house by his motorbike and was required to tender apology for his conduct after the incident was narrated to his father Santosh Bhoir. After such apology was tendered by Sumit Bhoir, younger brother of Santosh Bhoir (Appellant No.1) arrived at the scene and made following utterances :

"तु का माझ्या भावाला माफी मांगायला लावणारी कोण? "तू माहरिन, मी एकटाच तुझ्यावर चढायला काफी आहे."

3) The FIR statement alleges that at the time of making the above utterances, Complainant's daughters, her tenant Yadav, several other persons and residents were present. So far as Appellant No.2 is concerned, he is the father of Appellant No.1- Sunil Bhoir. There is an allegation that Appellant No.2 attempted to assault the Complainant with wooden log and also made caste based utterances towards her.

4) There can be no doubt to the position that the caste based utterances are made by Appellant No.1 in public view. Not only the utterances are made in public view, but the same were made in presence of several independent persons. I have gone through the statements of Mr. Rajkumar Mohan Das and Mr. Gokulanand Shriparmanand Yadav who have corroborated caste based utterances made by the Appellant No.1.

5) Mr. Icham, the learned counsel appearing for the Appellant would rely upon Judgment and Order dated 26 February 2019 passed

by this Court in Criminal Appeal No. 787 of 2018, Bench at Aurangabad (Kiran S/o Madhukar Ingle Vs. State of Maharashtra & Anr.) in which this Court has held in paragraph 18 as under:

"18. In the matter-in-hand, it has been alleged that the appellant hurled castiest abuses as "महारणे or मांगटे" during the fight for demand of amount paid in advance to the complainant. If word "महारणे or मांगटे" are taken out from the complaint for moment then other utterances that "माझे काही वाकडे करू शकत नाहीत", perceived from the FIR though indicate "threat" or "intimidation" but does not pointer to the inference that there was any intent or mensrea to humiliate the complainant on his caste within public view. The allegations in the FIR in regard to assault and intimidation taking name of caste of the complainant would be at the most fall under the provisions of Indian Penal Code, with which appellant has already been charged for penal clause of causing voluntarily hurt under section 323 of the IPC and intimidation under section 506 of the IPC".

6) In my view, reliance by Mr. Icham on the observations made by this Court in Kiran S/o Madhukar Ingle Vs. State of Maharashtra & Anr. would not assist the case of Appellant No.1. In the present case, the words "तू माहरिन, मी एकटाच तुझ्यावर चढायला काफी आहे." clearly indicate an attempt on the part of Appellant No.1 to humiliate the Complainant with reference to her caste. The Complainant is a woman belonging to scheduled caste community. Therefore, in addition of offences under Sections 3(1)(r) and (s) of the SC & ST Act, there is a reason to believe that even an offence under Sections 3(1)(w)(ii) is also made out. In my view, therefore, bar under provisions of Section 18 would be clearly attracted in the present case so far as Appellant No.1 is concerned.

7) So far as the Appellant No.2 is concerned, he is aged 72 years and it is difficult to believe at this stage that he would attempt to

assault the Complainant with a wooden log, that too on account of Sumit Bhoir tendering apology for his conduct of causing damage to the step in front of the Complainant's house. The allegations against Appellant No.2 therefore, *prima facie* appear to be unbelievable considering his advanced age. In my view, therefore, *prima facie* case for commission of offence under provisions of SC & ST Act is not made out *qua* Appellant No.2 and therefore bar under provisions of Section 18 of the Act would not apply to him.

8) Mr. Icham has attempted to suggest that the Complainant is in the habit of implicating several persons in offences under the Atrocities Act and would rely upon FIR dated 14 May 2022 lodged by her with respect to incident against one Anita Suresh Somase. In my view, merely because the Complainant was required to lodge FIR against Anita Somase in respect of alleged incident of 14 May 2022, it cannot be a reason to disbelieve her version relating to 18 June 2024, which appears to be well-supported by statements of independent persons.

9) The conspectus of the above discussion is that this Court is not inclined to grant protection from arrest in favour of Appellant No.1. However, Appellant No.2 deserves to be granted protection from arrest considering his advanced age.

10) I accordingly proceed to pass the following order:

a) The Appeal is dismissed *qua* Appellant No.1-Sunil Lahu Bhoir.

b) The Appeal stands allowed *qua* Appellant No.2-Lahu Chahu Bhoir, who shall be released on bail in the event of his arrest in connection with Crime No.0237 of 2024 registered with Taloja Police Station, Navi Mumbai for offences punishable under Sections 352, 354, 509, 504, 506 and 34 of the Indian Penal Code and under Section 3(1)(r), 3(1)(s), 3(2) (va) and 3(1)(w)(ii) of SC & ST Act on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

d) Appellant No.2 shall remain present before the Investigating Officer on 3 and 4 December 2024 between 11.00 a.m. to 2.00 p.m. and shall co-operate with the investigations.

e) Appellant No.2 shall not contact the Complainant or any other witnesses associated with the case nor shall tamper with the evidence.

f) Appellants shall attend each date of hearing before the Court unless exempted from personal appearance.

11) With the above directions, the Appeal is **disposed of**.

[SANDEEP V. MARNE, J.]