

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 959 OF 2024

Waman Barku Mhatre

... Appellant

Versus

The State of Maharashtra & Anr.

... Respondents

Mr. Viresh Purwant with *Mr. Rushikesh Kale. Mr. A.K.Shaikh, Mr. Rajendra Bamane and Mr. Vignesh Ashokan, for the Appellant.*

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

Mr. Rajkumar Dangre, *ACP Crime Thane City.*

CORAM : SANDEEP V. MARNE, J.

DATE : 30 AUGUST 2024.

P.C. :

1) Not on board. Upon being mentioned, taken on board.

2) This is an Appeal under provisions of Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 challenging the Order dated 29 August 2024 passed by the Learned Special Judge, Kalyan rejecting application for pre-arrest bail filed by the Appellant in connection with C.R. No. 386 of 2024 registered with Badlapur Police Station on 21 August 2024 for offences

punishable under Sections 74 and 79 of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(1)(w)(ii) and 3(2)(va) of the SC & ST Act.

3) The learned counsel appearing for Appellant would state that though the Order is passed on 29 August 2024, copy of the Order is not yet made available. Therefore, this Court is unable to ascertain the exact reasons why the application for pre-arrest bail has been rejected by the learned Special Judge.

4) The learned counsel for the Appellant would submit that Respondent No. 2 has been personally served with notice about filing of the present Appeal as well as listing of the Appeal on production board. However, neither Respondent No. 2 nor any Advocate representing her is present before the Court. Issue notice to Respondent No.2, returnable on 4 September 2024. Notice to be served on Respondent No. 2 through the concerned Investigating Officer. Additionally, the Investigating Officer shall also record the statement of Respondent No.2 as to whether she desires to engage a private Advocate or avail the services of Legal Aid Panel Advocate. The statement shall be placed before the Court on the next date of hearing.

5) It appears that the application for pre-arrest bail was filed by the Appellant on 22 August 2024. The same remained pending before the learned Special Judge till 29 August 2024. A direction by this Court was required to be issued for decision of the application for pre-arrest bail after which, the application is ultimately decided and

rejected by Order dated 29 August 2024. The Appellant is without any interim protection in the mean time.

6) Perusal of the FIR statement would *prima facie* indicate that the concerned utterances by the Appellant were not made with an intention to humiliate the caste of the Complainant. No doubt Section 3(1)(w)(ii) is alleged against the Appellant possibly on account of the gestures made by him, while making the concerned utterances. *Prima facie*, it does not appear that the said utterances were again intended only to humiliate the caste of the Complainant. Therefore, *prima facie* the bar under Section 18 of the SC & ST Act may not apply to the present case. Considering the nature of allegations levelled in the FIR, in my view the Appellant deserves to be granted interim protection till Respondent No. 2 makes an appearance in the Appeal.

7) Till the next date of hearing, in the event of arrest of the Appellant in C.R. No. 386 of 2024 registered with Badlapur Police Station for offences punishable under Sections 74 and 79 of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(1)(w)(ii) and 3(2)(va) of the SC & ST Act, he shall be enlarged on interim bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount on following conditions:-

(a) Appellant shall furnish identity and address proof of himself and of his two blood relatives while furnishing sureties.

(b) The Appellant shall remain present before the Investigating Officer on 2nd and 3rd September 2024 between 11.00 a.m. and 2.00 p.m. and shall co-operate with conduct of investigation.

(c) Appellant shall not attempt to contact the Complainant or any of the witnesses associated with the case in any manner nor shall he tamper with the evidence in the case.

(d) The Appellant shall also not make any statements in the media about the Complainant.

8. List the Appeal on **4 September 2024.**

[SANDEEP V. MARNE, J.]