



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 454 OF 2024

APPELLANTS:

1. Nitesh Tribhuvan Sing,
Age 25 years, Occu: Labour.
2. Vaibhav Santosh Singh,
Age 20 years, Occu: Student,
Both residing at Sai Sratha Apartment,
Birla Gate, Ulhasnagar-1, Dist. Thane.

...VERSUS...

RESPONDENTS

1. The State of Maharashtra,
(At the instance of Pusad Police Station,
District Yavatmal in CR No. 769/2023)
2. Mohammad Shafi Ayan Abdul Shami,
Aged about 19 years,
R/o at Gandhi Ward Pusad, Tah. Pusad,
District Yavatmal.

Mr. Bharatkumar Nukte, counsel for the appellants
Ms. Shamshi Haider, APP for respondent/State.
Mr. Aditya S. Pande, counsel (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 19/11/2024

ORAL JUDGMENT :

1. **Admit.** Heard finally with consent of learned counsel

appearing for the parties.

2. This is an appeal filed under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, challenging the order passed by learned Additional Sessions Judge, Pusad, District Yavatmal.

3. The appellants are arrested on 23/11/2023 in connection with Crime No. 769/2023 registered under section 295-A, 153-A of the Indian Penal Code, 1860; Sections 3(1)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989; and Sections 67-A and 67-C of the Information and Technology Act, registered at Police Station, Pusad City.

4. The crime is registered on the basis of a report lodged by Mohammed Shafi Ayan Abdul Sami on an allegation that he is using the Instagram account. On 07/11/2023, when he was present in the house and was searching, at that time, he had seen some objectionable post posted on the name of Muhammad Paigambar, and some abusive language was used in respect of him. It is further alleged that similarly the objectionable post was also posted on the Instagram account by some unknown person in the name of Dr. Babasaheb Ambedkar, and the obscene pictures

were also posted along with said posts. Due to the said posts, the feelings of the Muslim Community as well as both communities were disturbed. On the basis of said report, police have registered the crime against the unknown person. During the investigation, the names of the present appellants are revealed, and therefore, they are arrested.

5. After registration of the crime, both the appellants approached the Special Court and applied for grant of bail, which was rejected. Being aggrieved with the same, the present appeal is preferred by the appellants on the ground that as far as the investigation in the crime is concerned, allegedly the offences are punishable with punishable less than seven years. There is no compliance of issuance of notice under Section 41. Moreover, the investigation carried out by the investigation nowhere shows that the present appellants are using the said Instagram account. Only the mobile numbers which are owned by the father of the present appellant No.2 are revealed, and therefore, they are arrested. It is submitted that the statement of the father of the appellant No. 2 is also not recorded. There is nothing on record to show that these are the persons who have posted the said objectionable posts on the Instagram account. Now, the investigation is already

completed, and charge-sheet is already filed. The appellants are behind bar since last one year and further incarceration is not required. In view of that, they be released on bail.

6. Learned APP and learned counsel for respondent No.2 have strongly opposed the said application on the ground that the appellants have not only disturbed the feelings of the community but they have also humiliated the personalities which are treated as God in the community. In view of that, their application deserves to be rejected.

7. After hearing learned counsel for the appellants, learned APP for State and learned counsel for respondent No.2, perused the entire investigation papers, it reveals that during the investigation, though various statements are recorded, it nowhere reveals that these are the appellants who are operating the said Instagram accounts. The mobile numbers, on the basis of which the investigating agency linked the present appellants that they are operating the said accounts. The mobile number belongs to father of the appellant No. 2. The SIM cards are also in the name of the father of the appellant No. 2. So, considering now, the investigation is already completed, and the charge-sheet is also filed; further incarceration of the present appellants is not

required. The alleged offences are punishable by less than seven years. Considering the above grounds, the appellants have made out a case for grant of bail. In view of that, I proceed to pass the following order.

- a] The appeal is **allowed**.
- b] The order passed by the Additional Sessions Judge, Pusa in Special Case No. 8/2024 dated 02/05/2024 is hereby quashed and set aside.
- c] The appellants – (1) Nitesh Tribhuvan Singh (2) Vaibhav Santosh Singh, shall be released on bail, in connection with Crime No. 769/2023 registered under section 295-A, 153-A of the Indian Penal Code, 1860; Sections 3(1)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989; and Sections 67-A and 67-C of the Information and Technology Act, on executing PR. Bond in the sum of Rs.25,000/- each with one surety in the like amount.
- d] The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

- e] The appellants shall not indulge themselves in similar types of activities.
- f] The appellants shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- g] The fees of the appointed counsel be quantified as per Rule.

The appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]

RKN

JUDGE

RKN