



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

CRIMINAL APPEAL NO. 533 OF 2024

SHUBHASH TUKARAM MEHSARE AND OTHERS

VERSUS

STATE OF MAHARATHARA THROUGH PSO PS CIVIL LINE AKOLA

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.M. Tirukh, Advocate for applicants
Adv. R.V. Sharma, (APP) for the non-applicant/State

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 27.09.2024

1. By preferring this appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the Atrocities Act), the appellants have challenged the order passed by the Special Judge under the Atrocities Act, Akola in Criminal Bail Application No.562 of 2024, by which the application of the appellants for grant of anticipatory bail is rejected.

2. Apprehending arrest at the hands of the police in connection with Crime No.455 of 2024 registered with Civil Lines Police Station, Akola, for the offences punishable under Section 294, 427, 504 & 506 of the Indian Penal Code, 1860 read with Section 3 (1) (g), 3 (1) (r) (s) and 3 (1) (w) (ii) of the Atrocities Act, the present appellants approached this Court for grant of pre-arrest bail.

3. The crime is registered on the basis of the report lodged by Dipika Sheshrao Tajne on an allegation that there is a previous dispute on account of the residential premises between the appellants and the family members. On 26.09.2023, the present appellants entered into the house in order to evict them from that place and abused them on their caste and also assaulted them. On the basis of the same, police have registered the crime against the present appellants.

4. I have heard the learned counsel for the appellants.

5. There is a previous dispute regarding the residential premises between the family members of the informant as well as the present appellants. The civil suit is also filed regarding the same. Initially two FIRs were lodged and as being it was an unsuccessful attempt to put the present appellants behind bar, the present FIR is lodged by filing the complaint before the Special Court and Special Court has directed under Section 156(3) of the CrPC and therefore, this report is lodged.

6. He submitted that considering the allegation against the present appellants, which is general in nature, at the most, there is a reference of the caste. As far as custodial interrogation of the present appellants are concerned, which is not required. In view of that, they be protected by granting *ad interim* protection.

7. The learned APP strongly opposed the said prayer on the ground that *prima facie* case is made out against the present appellants and in view of bar under Section 18 of the Atrocities Act, a prayer for grant of anticipatory bail deserves to be rejected.

8. After hearing the learned counsel or the appellants and the learned APP for the State, I have perused the recitals of the FIR, from which it reveals that previously also two FIRs were lodged by the informant against the present appellants. It further reveals from the record that previous dispute is between the parties and there was quarrel between them. As initially the proceedings under the provisions of Atrocities Act, was not initiated and therefore, again this FIR is lodged. Even assuming the allegation as it is, it reveals that the words used by the present appellants allegedly show that they have referred the caste of the informant. As far as abuses on the caste are concerned, the recitals of the FIR nowhere show that there were abuses on the caste. As far as bar under Section 18-A of the Atrocities Act is concerned, now it is a well settled that when the complaint does not make out the *prima facie* case for applicability of the provisions of the Atrocities Act, then the bar created by Section 18 and 18-A of the Atrocities Act shall not apply and thus, this Court would not be precluded from granting pre arrest bail to the accused persons.

9. At this stage, the appellants have made out the case to protect them by granting *ad interim* protection, as from the recitals of the FIR no *prima facie* case reveals, however, it is necessary to go

through the investigation papers. At this stage, custodial interrogation of the present appellants is not required. The bar under Section 18 of the Atrocities Act is also not attracted. In view of that, I proceed to pass the following order:

- (i) In the event of the arrest, in connection with Crime No.455 of 2024 registered with Civil Lines Police Station, Akola, for the offences punishable under Section 294, 427, 504 & 506 of the Indian Penal Code, 1860 read with Section 3 (1) (g), 3 (1) (r) (s) and 3 (1) (w) (ii) of the Atrocities Act, the appellants-(1) Subhash Tukaram Mehsare (2) Sadhana Subhash Mehsare (3) Shubham Subhash Mehsare (4) Sunita Subhash Mehsare and (5) Bhushan Shubham Mehsare, shall be released on *ad interim* anticipatory bail, on executing PR Bond of Rs.25,000/-each with one solvent surety of like amount.
- (ii) The appellants shall attend the concerned police Station, once in a week on Sunday, between 10.00 a.m. to 12 noon and shall cooperate to the investigating Agency.
- (iii) The appellants shall not induce, threat or promise to the any witnesses, who are acquaintance with the facts of the case.

The learned APP waives service of notice for the State.

Issue notice to the respondent no.2, returnable **after two weeks.**

JUDGE

ND.THAWRE PA