



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 1047 OF 2024

Kailas Devichand Rathod

.. Appellant

Versus

The State of Maharashtra and another .. Respondents

Shri Avinash D. Hande, Advocate for the Appellant.

Mrs. Chaitali Choudhari-Kutti, A.P.P. for the Respondent No. 1.

Shri M. R. Wagh, Advocate for the Respondent No. 2.

CORAM : SHAILESH P. BRAHME, J.

DATE : 05TH MAY, 2025.

FINAL ORDER :

. Appellant's pre-arrest bail is rejected by impugned judgment and order. He is apprehending his arrest in furtherance of Cr. No. 597/2024 registered with Aundha Nagnath Police Station, Dist. Hingoli for the offences punishable U/Sec. 352, 351(1), 115(2) of the Bhartiya Nyaya Sanhita, 2023 and U/Sec. 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Appellant was protected by order dated 16th December, 2024. Respondents did not make any grievance in respect of the conditions imposed while granting ad-interim protection.

3. It is submitted by the learned counsel for the appellant

that offence did not take place within public view. No serious injury has been inflicted. Due to the disputes between the parties, appellant has been falsely implicated in the offence. There is delay of two days in lodging FIR.

4. Learned Assistant Public Prosecutor tenders on record few papers of investigation to point out that there are two eye witnesses namely wife of the informant Sumanbai and daughter in law Trishala. It is submitted that other persons who were operating JCB were also present. Incident occurred within the public view in the morning hours.

5. Mr. Wagh, learned advocate for the respondent No. 2 submits that specific allegations are attributed to the appellant. He would submit that informant was hospitalized and, therefore, immediately on the same day report could not be lodged. My attention is adverted to the observations of the learned Judge to buttress the submission that overt act of the appellant is within purview of Sec. 3(2)(va) of the Atrocities Act, for which bar U/Sec. 18 of the Atrocities Act is attracted. First information report discloses that when the incident took place, Sumanbai and Trishala were present in the field being neighbourers. Parties are knowing each others and they are having some issues.

6. Mr. Wagh, learned advocate is right in his submission that, as the informant was injured and under treatment, report was lodged after two days, which cannot be said to be a ground to

grant protection to the appellant.

7. Though, it is submitted by the learned A. P. P. that there are independent eye witnesses, papers of investigation did not show that there is any other eye witness other than Sumanbai and Trishala. Considering overall circumstances of the case, I am of the considered view that offence did not take place within public view. In all probabilities false implication of the appellant cannot be ruled out. Therefore, allegations attracting provisions of Sec. 3(2)(va) of the Atrocities Act that itself cannot be an impediment in confirming the interim protection granted to the appellant.

8. However, considering the status of the parties and as they are the neighbours, I deem it appropriate to impose additional condition. The impugned judgment and order is unsustainable and liable to be quashed. I, therefore, pass following order.

O R D E R

A. The criminal appeal is allowed.

B. The impugned judgment and order dated 16.11.2024 passed by the learned Special Judge/Additional Sessions Judge, Basmatnagar in Criminal Bail Application No. 288 pf 2024 is quashed and set aside.

C. Ad-interim protection granted vide order dated 16.12.2024

stands confirmed on additional condition that appellant shall not enter Aundha Nagnath village for a period of three (03) months from today. The appellant shall report his whereabouts to the investigating officer.

D. The criminal appeal is disposed of.

[SHAILESH P. BRAHME J.]

bsb/May 25