

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1030 OF 2018

SALIM ABDUL SHAIKH)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Gayatri Gokhale a/w. Ms.Samruddhi Salvi, Advocate for the Appellant.

Mr.Vinod Chate. APP for the Respondent – State.

Mr.Bhalchandra Shinde, Advocate for Respondent No.2.

Mr.Dhaigude, Police Sub-Inspector and Mr.

CORAM : A. M. BADAR, J.

DATE : 25th SEPTEMBER 2019

ORAL JUDGMENT :

1 Heard. Admit.

2 Heard finally, considering the fact that the appeal is challenging the order passed by the learned Special Judge on Anticipatory Bail Application No.798 of 2018 on 26th July 2018,

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thereby rejecting the claim of the appellant/accused for anticipatory bail in Crime No.180 of 2018 registered against appellant/accused Salim Shaikh and other members of his family with Kalyan Taluka Police Station for offences punishable under Sections 354, 440, 277, 143, 504 and 506 of the Indian Penal Code as well as under Sections 3(1)(s), 3(1)(w)(i)(ii) and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 2015.

3 For the sake of convenience, it will be apposite to reproduce provisions of relevant Sections invoked against the appellant/accused under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act. They read thus :

“3 Punishments for offences of atrocities :

(1)(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

“(1)(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of

touching is of a sexual nature and is without the recipient's consent;"

“(1)(w)(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation - For the purposes of sub-clause (i), the expression “consent” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;"

“(1)(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the

Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;”

4 Heard the learned counsel appearing for the appellant/accused. She vehemently argued that other co-accused in the instant crime are either released on regular bail or on anticipatory bail. It is further argued that this court, while deciding Criminal Appeal No.1344 of 2018 challenging rejection of anticipatory bail by Mumtaz Salim Shaikh – wife of the present appellant/accused, has observed that frequent incidents of quarrels are taking place only because family of the appellant/accused is the sole resident of the building, who is belonging to Muslim religion and rest of all the residents are belonging to Hindu religion. According to the learned counsel for the appellant/accused, the order of this court in the said criminal appeal makes it clear that the appellant/accused and his family members are singled out by persons belonging to Hindu religion residing in the society, and therefore, several First Information Reports (FIR) are lodged against the appellant/accused and his family members. She further argued that because of this conduct

on the part of other residents and in order to comply directions of the court, the appellant/accused and his family members are now constrained to reside in some other house, by leaving the apartment owned by him in Sai Ashray Complex, where the alleged incident took place. The learned counsel further argued that the allegations are per se false. No such incident took place and the appellant/accused was not even present on the spot of the incident at the time of the alleged incident. To substantiate this contention, according to the learned counsel for the appellant/accused, a compact disc containing C.C.T.V. footage is already produced before the Investigating Officer. With this, the learned counsel submits that the appellant/accused is entitled to be released on anticipatory bail.

5 The learned APP opposed the appeal by contending that statement of Shrutika Sirsath makes out the offence punishable under Section 3(1)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act. Similarly, he argued that statement of Neha Khosla makes out the offence punishable

under Section 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act.

6 I have also heard the learned counsel appearing for the respondent no.2/First Informant. He argued that the offence is very very serious and in view of bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, the appellant/accused is not entitled to be released on anticipatory bail.

7 I have considered the submissions so advanced and also perused the material placed on record.

8 So far as the offence punishable under Section 3(1)(s) is concerned, offence of atrocity is made out only when the same takes place “in any place within public view.” What amounts to “public view” is explained by the learned Division Bench of this court in the matter of **Pradnya Pradeep Kenkare and Ors. vs. State of Maharashtra**¹. Relevant observations in paragraph 8 of the said

¹ 2005 (3) Mh.L.J. 368

judgment reads thus :

“8The provisions of [Section 3\(1\)\(x\)](#) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being "within public view". The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under [Section 3\(1\)\(x\)](#) of the said Act. In the provision of law comprised under [Section 3\(1\)\(x\)](#) of the said Act, the word "view" refers to that of 'public' but prefixed by the expression "in any place within". Being so, the word "public" not only relates to the location defined by the word "place" but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or

tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under [Section 3\(1\)\(x\)](#) of the said Act.”

It is, thus, clear that the word “public” not only relates to the location defined by the word “place” but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled castes or scheduled tribe. Presence of both ingredients is absolutely necessary for making out the offence of atrocity.

9 The expression “public view” is clarified by this court in the matter of Balu s/o. Bajirao Galande vs. State of Maharashtra and Another². It is observed in paragraph 19 of the said judgment thus :

² 2006 6 AIR (BOM) ® 251

“19 Considering the judicial pronouncements on the subject, the expression within public view must be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of at least one independent person. The test of audibility and visibility can be taken to have been satisfied if an independent person is actually present or is at a place where the utterances are clearly audible and reaches the scene of occurrence while the incident is still in progress.”

It is, thus, clear that, abuses, insult or humiliation must take place in presence of or in the proximity of atleast one independent public witness.

10 According to the prosecution case, at about 7.45 p.m. of 12th May 2018, First Informant Rajeshri along with her husband Vilas and their children went to the parking place of the society and at that time, the appellant/accused Salim Shaikh, his wife Mumtaz and other family members abused First Informant Rajeshri and her husband Vilas in the name of their caste. This incident, according to the prosecution, took place in a place within

public view as Neha Khosla had witnessed that event. Statement of Neha Khosla shows that she is not an independent public witness. She is friend of the prosecuting party.

11 So far as incident of 8.00 a.m. of 13th May 2018 is concerned, it is averred by the prosecution that relative of the First Informant namely Shrutika had disclosed to her that the appellant/accused caught hold of her hand and threatened her. Perusal of the FIR containing narrations of this incident by Rajeshri does not make out a case that the appellant/accused had intentionally touched Shrutika and that touch was sexual in nature. On the contrary, even if what the First Informant has stated is accepted, then the appellant/accused was threatening Shrutika. Similar is the statement of Shrutika Sirsath. The touch, even if it is assumed was there, it was for threatening Shrutika. It was not of a sexual nature. Similarly, the words and acts alleged were also not of a sexual nature.

12 In this view of the matter, bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act is not applicable to the case in hand.

13 So far as other offences are concerned, so also offences of atrocity, custodial interrogation of the appellant/accused in such situation is not warranted. Therefore, the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 26th July 2018 passed by the learned Additional Sessions Judge, Kalyan, below Exhibit 1 in Criminal Anticipatory Bail Application No.798 of 2018 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellant/accused is allowed.
- iv) In the event of arrest of the appellant/accused in Crime No.180 of 2018 registered with Kalyan Taluka Police Station,

at the instance of respondent no.2/First Informant Rajeshri Sirsath, the appellant/accused be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.

- v) The appellant/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vi) The appellant/accused shall not in any manner tamper with the prosecution witnesses.
- vii) The appellant/accused should attend the concerned Police Station as and when required by the Investigating Officer for the purpose of investigation.
- viii) The appeal is disposed off.

(A. M. BADAR, J.)