

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 363 OF 2017

Ramakabal Ramkrupal Dubey and ors. .. Appellants

Vs.

The State of Maharashtra .. Respondent

Mr.Sandeep Mishra, for the Appellants.

Mrs.G.P. Mulekar, APP for State.

Mr.PS. Gautam, for Intervenor.

**CORAM : SMT. V.K.TAHILRAMANI &
M.S.KARNIK, JJ.**

28th APRIL, 2017

ORAL ORDER (PER SMT. V.K.TAHILRAMANI) :

1. Heard learned Counsel for the appellants, learned APP and learned Counsel for the intervenor.

2. Learned APP has handed over police report of this case which is taken on record and marked 'X' for identification.

3. The appellants - accused No. 1 to 4 have preferred this Appeal against the order dated 10/11/2016 passed by the

learned Additional Sessions Judge - II, Thane in Anticipatory Bail Application No. 2150 of of 2016. By the said order, the anticipatory bail application preferred in C.R. No. II-57 of 2016 registered with Kalwa police station against the appellants came to be rejected. The said C.R. is in relation to the offence under section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'Attrocities Act') and section 7 of the Protection of Civil Rights Act.

4. Learned Counsel for the appellants submitted that the incident has occurred on 20/08/2016, however, the FIR is lodged on 30/08/2016. He submitted that this delay in lodging FIR raises serious doubt about the genuineness of the case of the complainant. Learned APP in reply pointed out that there is no delay. The complainant in fact on the very next date i.e. 28/10/2016 addressed a letter to the Senior Police Inspector of Kalwa police station wherein he has mentioned all the facts which has stated in FIR. In such case, it cannot be said that the delay in lodging FIR affects the veracity of the statement of the

case of the complainant.

5. FIR as well as the complaint dated 21/08/2016 shows that on 20/08/2016, the appellants No. 2, 3 & 4 abused the complainant in relation to his caste and also assaulted him with kick blows. Learned APP submitted that it is a case of common intention, hence, it has to be held that all the four appellants abused the complainant in relation to his caste. As far as this contention is concerned, on reading FIR it shows that appellant No.4 abused the complainant in relation to his caste. Thereafter he called accused Nos. 3 & 4. They came to the spot. Accused Nos. 2 & 3 also abused the complainant in relation to his caste. Thereafter the accused assaulted with fist blows. The complainant fell down. After that the appellant No.1 arrived at the spot and pushed the complainant. Thus, it is seen that appellant No.1 arrived at the spot after appellants No.2 to 4 abused the complainant in relation to his caste. Looking to the facts of this case, it cannot be said that appellant No.1 shared the common intention with appellants No. 2 to 4 of abusing the

complainant in relation to his caste. Hence, Atrocities Act would not be applicable to appellant No.1. As far as injuries caused by the accused persons is concerned they are all minor in nature. However, as far as appellants No.2 to 4 are concerned, section 18 of the Atrocities Act would be attracted. Hence, we are not inclined to grant anticipatory bail to accused Nos. 2 to 4. Therefore, their prayer for anticipatory bail is rejected. However as far as appellant No.1 is concerned, we grant anticipatory bail to him on the following conditions.

6. In the event of arrest, appellant No.1 -Mr.Ramakabal Ramkrupal Dubey to be released on bail on furnishing surety in the sum of Rs.25,000/- and P.R. bond in the like amount.

7. It is stated that appellant No.1 was earlier released on bail in the sum of Rs.25,000/- with one surety in the like amount by order dated 17/11/2016 passed by this Court in Anticipatory Bail Application No. 1969 of 2016. Appellant No.1 is allowed to furnish the same surety.

8. Appeal is disposed of in the above terms.

9. At this stage, learned Counsel for the appellants on behalf of appellants No. 2 to 4 submits that he wishes to approach the Supreme Court against this order. Hence, interim protection granted to appellant nos. 2 to 4 be extended for a further period of 4 weeks. In view of the prayer made, interim protection granted to appellants No.2 to 4 is extended by a period of 4 weeks from today.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)