

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.713 OF 2017

1) Shahaji Jijaba Gawade &	
2) Sagar Shahaji Gawade	.. Appellants
V/s.	
The State of Maharashtra & Anr.	.. Respondents

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Mr.M.S. Mohite i/b. Mr.D.D. Shinde, Advocate for the Appellants.
Mrs.V.S. Mhaispurkar, APP for Respondent No.1 – State.
Mr.R.A. Zade, Advocate for Respondent No.2.

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CORAM : RANJIT MORE AND
PRAKASH D. NAIK, JJ.

DATED : OCTOBER 4, 2017.

P.C. :

Heard Mr.Mohite, learned counsel for the appellants,
Mr.Zade for respondent no.2 and learned APP for respondent
no.1-State.

2 The appellants-original accused nos.1 and 2 have preferred this Appeal against the order dated 5th August, 2017, passed by the learned Additional Sessions Judge-I, Baramati, Pune in Anticipatory Bail Application No.483 of 2017. By the said order, the application for Anticipatory Bail preferred by the appellants in C.R.No.450 of 2017, registered at Baramati City

Police Station, Pune, for the offences punishable under Section 3 (1) (r)(s) and Section 3(1) (u) and 3(2) (va) came to be rejected. Hence, this Appeal.

3 The appellant No.1 owns a gala at Shivaji Chowk, Baramati. Respondent no.2 – complainant is running a tea stall in front of this gala. From the record it appears that there is a dispute between the appellant and respondent no.2 about removal of the said tea stall.

4 Original accused no.3 Sangram gave complaint to the Municipal Authorities on 7th July, 2017 to remove the encroachment by respondent no.2-complainant. Thereafter, on 15th July, 2017, the original accused no.3 Sangram made complaint to the police inspector Baramati City Police Station that respondent no.2 has given threats that he will file false case of molestation and atrocity against him. On 19th July, 2017 N.C. Complaint No.925 of 2017 was registered against respondent no.2- complainant alleging that when the municipal corporation came to remove the encroachment, the respondent no.2 – complainant abused the appellants and threatened to file false case against him under the Atrocity Act.

5 So far as the subject FIR is concerned, same is registered in respect of the incident of 18th July, 2017. The record reveals that the respondent no.2 complainant initially approached the Special Court on 20th July, 2017 and file Special Case No.48 of 2017. In this case the allegations were made that the appellant has extorted Rs.54,000/- from him and by threatening him he was asked to pay Rs.10,000/- every month to do business. Subsequent to this, the subject FIR is registered on 28th July, 2017. Perusal of the same reveals that respondent no.2 has given different version regarding the said amount of Rs.54,000/-. In FIR, the respondent no.2 has come with the case that he agreed to purchase the appellant's gala for an amount of Rs.1,00,000/- and an amount of Rs.54,000/- was given as earnest.

6 Be that as it may be, we have gone through the FIR, copy of which is annexed at page 24. As stated above, the FIR is registered under Section 3 (1) (r)(s) and Section 3(1) (u) and 3(2) (va). So far as the allegations for an offence under Section 3 (1) (r)(s) and 3(2) (va) are concerned, we do not find any allegation that offence is committed within public view within the preview of the said provisions. As far as the offence under Section 3(1)(u) is concerned, there are no allegations that the

appellants had promoted or attempted to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes. Similarly, we are of the opinion that offence under Section 3(2)(v) is also not made out since there is no offence alleged under the Indian Penal Code against the appellants which is punishable for a term of 10 years or more.

7 Taking over all facts and circumstances of the case into consideration, we are of the opinion that the bar under Section 18 of the Atrocity Act, 1989 is not attracted. In our considered view, the appellants are entitled to anticipatory bail.

8 We accordingly, dispose of the Appeal by passing following order:

:: ORDER ::

- (i) The impugned order dated 5th August, 2017, so far as it operate against the appellants is quashed and set aside;
- (ii) In the event of arrest of appellants by Baramati City Police Station, Pune, in connection with

C.R.No.450 of 2017, they are directed to release the appellants on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) each with one or more sureties in the like amount on the following conditions:

- (a) The appellants shall report Baramati City Police Station, Pune once in a week i.e. on every Sunday between 10:00 a.m. to 12:00 noon, till filing of the charge-sheet;
- (b) Appellants shall not hamper or tamper evidence or witnesses in the present crime;
- (iii) It is made clear that the observations made herein-above are in support of this Appeal and are *prima facie* in nature and the trial Judge shall not be influenced by the same at the time of trial.

(PRAKASH D. NAIK, J.)

(RANJIT MORE, J.)