

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.796 OF 2018

1) KUNDALIK SONBA KALE)
2) SONBA LALU KALE)...APPELLANTS

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Rupesh Zade, Advocate for the Appellants.

Mr.G.S.Jadhav, Advocate for Respondent No.2.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th SEPTEMBER 2018

ORAL JUDGMENT :

1 Heard. Admit. Heard forthwith by consent of parties.

2 Appellants are accused in Crime No.232 of 2018 registered with Police Station Baramati, Pune Rural, at the

instance of respondent no.2 Dattatraya Bhosale for offences punishable under Sections 323, 324, 504, 506 read with Section 34 as well as under Sections 3(1)(r)(i), 3(2)(va) of Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act. 1989. They are challenging the order dated 14th June 2018 passed by the learned Additional Sessions Judge, Baramati, below Exhibit 1, thereby rejecting their application for anticipatory bail.

3 Heard the learned counsel appearing for appellants/accused as well as the learned APP appearing for respondent no.1/State and the learned counsel appearing for respondent no.2/ First Informant. He argued that infact casteist abuses were given by the accused persons though they are not reflected in the FIR.

4 I have considered the submissions advanced and also perused the material made available including the copy of the impugned order.

5 The FIR lodged by respondent no.2/Dattatraya Bhosale contains an averment that when members of the prosecuting party were present in their agricultural field, they saw accused persons, who happen to be owners of the adjoining field. They were burning wastage of sugarcane crop in their field. It is further averred that mother of the First Informant questioned this act and then accused persons including the present appellants assaulted the mother of the First Informant and dishonoured her by giving her abuses. It is alleged that the accused persons had assaulted the mother of the First Informant by means of a sickle causing bleeding injury to her leg.

6 Taken at its face value, the averments in the FIR do not reflect commission of any offence punishable under the penal provisions of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act. 1989. It is not averred that the accused persons or any of them had given casteist abuses to the members of the prosecuting party including the mother of the First Informant in order to humiliate her within the public view. Other offences

punishable under the provisions of the Indian Penal Code are bailable in nature and this fact is not disputed by the learned APP.

7 In this view of the matter, the impugned order passed by the learned trial court rejecting the application for anticipatory bail by holding that because of bar under Section 18 of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act. 1989, appellants/accused are not entitled for such relief, cannot be sustained. In the result, the following order :

ORDER

- i) The appeal is allowed.

- ii) The impugned order dated 14th June 2018 passed by the learned Additional Sessions Judge, Baramati, below Exhibit 1 in Bail Application No.355 of 2018 is quashed and set aside.

- iii) The application for anticipatory bail moved by appellants / accused is allowed.

- iv) In the event of their arrest in Crime No.232 of 2018 registered with Police Station Baramati, Pune Rural, at the instance of respondent no.2 Dattatraya Bhosale for offences punishable under Sections 323, 324, 504, 506 read with Section 34 as well as under Sections 3(1)(r)(i), 3(2)(va) of Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act. 1989, appellants/accused be released on bail on their executing P.R.Bond in the sum of Rs.15,000/- each and on furnishing surety in like amount, by each of them.
- v) Appellants/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) Appellants/accused should attend the concerned police station as and when directed by the Investigating Officer for the purpose of investigation.

vii) The appeal is disposed of accordingly.

(A. M. BADAR, J.)

**Arti Vilas
Khatate**

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Arti Vilas Khatate
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