

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.435/2018

Namdeo S/o Kisan Gajbhar,
 aged about 70 Yrs., Occu. Agriculturist,
 R/o Pangarkhed, Tah. and Distt. Washim.

..Appellant.

..Vs..

1. The State of Maharashtra,
 through Police Station Officer,
 Police Station Ansing, Distt. Washim.
2. Yashoda W/o Devidas Kalambe
 aged 25 Yrs., Occu. Agriculturist.
3. Namdeo S/o Shankar Kalambe
 aged major, Occu. Agriculturist.
4. Latabai W/o Haridas Kalambe
 aged major, Occu. Agriculturist.
5. Chandrabhagabai W/o Baban Garole,
 aged major, Occu. Agriculturist.

All Nos.2 to 5 are R/o Village Songavhan,
 Tah. and Distt. Washim.

..Respondents.

 Shri N.B. Kalwaghe, Advocate for the appellant.
 Shri V.P. Gangane, A.P.P. for the respondent No.1.

CORAM : Z.A. HAQ, J.

DATE : 11.9.2018.

ORAL JUDGEMENT

1. Shri V.P. Gangane, learned A.P.P. has placed on record pursis dated 11th September, 2018 stating that the notice about pendency of appeal before this Court is given to respondent Nos.2 to 5. None appears for the respondent

Nos.2 to 5.

2. Heard Shri N.B. Kalwaghe, Advocate for the appellant and learned A.P.P. for the respondent No.1 / State.

3. On complaint lodged by respondent No.2, F.I.R. is registered against the appellant for offences punishable under Section 294, 323 and 504 read with Section 34 of the Indian Penal Code and Section 3(1)(r), 3(1)(s) and 3(2) (va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. According to the complaint, the victims are owners of Gat No.143 situated at Songavhan and the victims are also cultivating 5.47 R. land owned by Namdeo Shankar Kalambe (father-in-law of the complainant) and when the victims had gone to the agricultural lands on the date of incident, the appellant and two others came there and started hurling abuses and threatened to kill the victims if they enter those agricultural lands. According to the complaint, co-accused Vijay had given blows by stick causing injuries to the mother of the complainant.

4. Learned Advocate for the appellant has pointed out that a civil dispute is pending between the wife of appellant and Namdeo Shankar Kalambe (father-in-law of the complainant).

5. After going through the F.I.R., *prima facie* I find that the ingredients

necessary to constitute offence under Section 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 does not exist and the prosecution will have to prove its case at the trial.

6. Considering the facts of the case, specially that the appellant is aged about 70 years and as the investigating agency has not been able to point out that the custodial interrogation of the appellant is necessary and accepting the statement made on behalf of the appellant that any other crime / offence is not registered against the appellant, following order is passed:

(i) The order passed by the learned Additional Sessions Judge on M.C.A. No.217/2018 on 3rd July, 2018 is set aside.

(ii) In the event of arrest in connection with Crime No.110/2018 registered by the respondents, the appellant be released on bail on executing P.R. bond for Rs.10,000/- (Rs. Ten Thousand).

(iii) The appeal is **allowed** in the above terms.

CRIMINAL APPLICATION (APPA) NO.662/2018

In view of the above order, the criminal application praying for grant of *ad-interim* and interim anticipatory bail does not survive and is **disposed** accordingly.

JUDGE