

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 863 OF 2019

Ashok Baban Agivale and ors. ... Appellants

Vs

The State of Maharashtra and anr. ... Respondents

...

Mr.Vivek V. Salunkhe i/b. Mr.Dinesh R. Shinde for the appellants.

Mr.A.S. Patil, APP, for the respondent-State.

Ms.Alefiya Manduivala i/b. Mr.Ramesh Dube-Patil for respondent no.2.

...

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 18th JULY 2019.

P.C. :

The appellants are the accused in Crime No.I-114 of 2019, Shahapure PS., District Thane, for the alleged offences under Sections 326, 325, 323, 336, 337, 338, 143, 147, 504 and 506 of Indian Penal Code, 1960, as well as Sections 3(1)(5) of the SC & ST (Prevention of Atrocities) Act, 1989 (the “Atrocities Act”).

2. As per the allegations, on 21st March 2019, the informant, belonging to Schedule Tribe, was constructing a hut on his field. Then, the accused no.3 abused him, and that resulted in a scuffle. Summoned through

a phone call, the other accused reached the place of incident and threw stones at the informant. The stone-pelting injured the informant on his left arm and forehead.

3. On the informant's complaint, the police registered a crime. In that context, the appellants have filed an Application No.675 of 2019 for anticipatory bail before the Additional Sessions Judge, Kalyan, who dismissed the application through an order dated 12th June 2019. Aggrieved, the appellants have filed this Criminal Appeal. In this appeal, they seek anticipatory bail.

4. The learned counsel for the appellants has submitted that the alleged incident took place on 21st March 2019. According to him, the provisions of the Atrocities Act were incorporated in the crime on 2nd May 2019, when the police recorded the informant's supplementary statement. He has also submitted that the informant got operated on 12 days after the incident; therefore, the injury cannot be linked with the event. In the end, the learned counsel has submitted that the police invoked the Atrocities Act only as an afterthought. He has also argued that as the medical evidence emerged much later—on 3rd April 2019, that is 12 days after the incident—the appellants should have the benefit of the doubt. In the end, he has submitted that the appellants are earning members of the family and their

incarceration will jeopardize their livelihood.

5. Shri Patil, the learned APP for the respondent-State, and Ms. Alefiya Manduivala, the learned counsel for respondent no.2, have opposed the application.

6. Heard Shri Vivek for the appellants, Shri Patil, APP, for the respondent-State, and Ms. Alefiya Manduivala for respondent no.2.

7. I have read the FIR, and the order of rejection by the Additional Sessions Judge, Kalyan, besides the medical report placed on record.

8. The appellants' counsel has correctly pointed out the cast slur was added about one and half months' later. I am prepared, for now, to disregard that allegation; but the fact remains that the informant sustained what seem to be serious injuries that required an operation. If no person among the appellants could be attributed with an overt act of assaulting the informant, then the theory of common intention gains strength.

9. Indeed, the appellants' counsel has tried to make heavy weather of the delayed surgery on the informant. If a person sustains an injury or a wound, surgery is not the first option. If the medical malady refuses to be cured, the doctors, usually, will operate, as a last resort. So any delay in such an eventuality cannot be fatal. We cannot wish away the fact that the informant did sustain injuries that, perhaps, called for surgery.

Under these circumstances, I felt no merits in this appeal and, accordingly, dismiss the appeal. But I clarify that these observations are prima facie. They do not deny the appellants' their right to file a fresh application for bail—regular or anticipatory—if there are any further developments.

(DAMA SESHADRI NAIDU, J.)

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