

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.686 OF 2017

1. Navnath Dnyanu Khodbale (Mali),
Age 25, Occu. : Agriculture,
- 2 Dnyaneshwar Rama Khodbale (Mali),
Age. 50, Occu. : Agriculture,
Both R/o.Miraj Road,
Near Gouri Petrol Pump,
Sangola, Tal.Sangola, Dist.Solapur. ... **Appellants**
V/s.
1. The State of Maharashtra,
(At the instance of Sangola
Police Station, Solapur.)
- 2 Dayanand Savata Chandanshive,
Age 28, Occu. : Labour,
R/o. Near Gouri Petrol Pump,
Miraj Road, Sangola,
Tal.Sangola, District Solapur. ... **Respondents**

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Ms.Rati Sinhasane with Mr.R.A.Naik i/b. Mr.Umesh R.
Mankapure, Advocate for the Appellants.

Mr.S.V.Gavand, APP for the Respondent No.1/State.

Mr.Vijaykumar R. Garad, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 7th FEBRUARY 2019.

ORAL JUDGMENT :

1 By this appeal, the appellants/accused persons in Crime No.473 of 2017 registered against them at Police Station, Sangola, District Solapur at the instance of respondent No.2 for the offences punishable under Sections 325, 323, 504 and 506 read with Section 34 of the Indian Penal Code, under Section 3(1) (r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity), are challenging the Order dated 29/07/2017 passed by the learned Special Judge, Pandharpur in Criminal Miscellaneous Application No.319 of 2017 thereby rejecting their claim for anticipatory bail.

2 Heard the learned Counsel appearing for the appellants/accused, the learned Additional Public Prosecutor for the respondent/State and the learned Counsel for the respondent No.2/First Informant.

3 Admit.

4 Heard finally considering the fact that the appeal is pertaining to rejection of the claim of the appellants/accused for anticipatory bail.

5 The learned Counsel appearing for the appellants/accused argued that initially, the offence was rightly registered

under Sections 325, 323, 504 and 506 read with Section 34 of the Indian Penal Code, but subsequently, for the reasons best known to the Investigating Officer, provisions of Section 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are added to the case diary of the crime. There is no iota of evidence in respect of the commission of said offences.

6 The learned Additional Public Prosecutor argued that the charge-sheet has already been filed after completion of investigation in the subject crime.

7 As against this, the learned Counsel for the respondent No.2/First Informant argued that spot panchanama shows that the offence took place within public view. Two bamboo sticks were seized by police. There was assault by means of bamboo sticks and, therefore, in view of the bar of Section 18 of the Atrocities Act, the appeal deserves to be dismissed.

8 I have considered the submissions so advanced and also perused the charge-sheet.

9 Penal provisions of Section 3(1)(s) of the Atrocities Act are invoked against the appellants/accused in this case. Giving abuses to any member of Scheduled Caste or Scheduled Tribe by

caste name in any place within public view amounts to offence of atrocities. Perusal of the entire charge-sheet including the FIR does not reflect commission of this offence by the appellants/accused.

10 Section 3(2)(va) of the Atrocities Act deals with commission of scheduled offence by an accused knowing that the victim is a member of a scheduled caste or scheduled tribe. In the case in hand, the FIR itself reflects that appellants/accused so also First Informant Dayanand were neighbourers. Their houses are adjacent to each other. Averments in the FIR are to the effect that the appellants/accused used to roam in the vicinity of house of respondent No.2/First Informant Dayanand. He questioned the appellants/accused in this regard. Thereupon, appellants/accused as well as co-accused Ganesh had assaulted the First Informant as well as his wife. It is averred that left shoulder of First Informant Dayanand is fractured in this attempt.

11 The charge-sheet does not show any fracture injury suffered by First Informant Dayanand. It is also not disclosing that the offence was committed knowing that the victim is a member of scheduled caste or scheduled tribe. Rather, in the FIR itself, there is no such averments. Even caste of the First Informant is not mentioned in the FIR.

12 In this view of the matter, bar of Section 18 of the Atrocities Act is not applicable to the case in hand. After filing of the charge-sheet on completion of investigation, custodial interrogation of the appellants/accused is not warranted. Therefore, the Order :

ORDER

- (i) The Appeal is allowed.
- (ii) The impugned Order dated 29/07/2017 passed by the learned Special Judge, Pandharpur below Exhibit 1 in Criminal Miscellaneous Application No.319 of 2017 rejecting the claim of anticipatory bail of the appellants/accused is quashed and set aside.
- (iii) The Criminal Miscellaneous Application bearing No.319 of 2017 moved by the appellants/accused for grant of anticipatory bail is allowed.
- (iv) In the event of arrest of the appellants/accused in Crime No. 473 of 2017 registered with Sangola Police Station, District Solapur at the instance of respondent No.2 Dayanand Savata Chandanshive, the 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 the like amount by each of them.

- (v) As a condition of this order, the appellants/accused should not repeat commission of similar offence in future.
- (vi) As a condition of this Order, the appellants/accused shall not extend any threat inducement or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
- (vii) The Appeal is accordingly disposed of.

(A.M.BADAR J.)