

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPEAL NO. 58 OF 2020
AND
CRIMINAL APPEAL NO. 59 OF 2020**

CRIMINAL APPEAL NO. 58 OF 2020

Bhaskar s/o Vitthalrao Dambhare,
Aged about 37 years, Occ.- LIC Agent,
R/o Shanti Nagar, Phase-III, Behind Shalimar
Traders, Borda, Tq. Warora, District Chandrapur.

.... **APPELLANT**

// VERSUS //

1. State of Maharashtra,
through its Police Station Officer,
Police Station Warora, District Chandrapur.

2. Nirmala w/o Janba Maulikar,
Aged 60 years, Occ. House-Help,
R/o Shanti Nagar, Phase-III, Behind Shalimar
Traders Borda, Tq. Warora, District – Chandrapur.

.... **RESPONDENTS**

AND

CRIMINAL APPEAL NO. 59 OF 2020

1. Bhaskar s/o Mahadeo Upare,
Aged about 50 years, Occ.- Service,
R/o Shanti Nagar, Phase-III, Behind Shalimar
Traders, Borda, Tq. Warora, District Chandrapur,
presently at Nagpur.

2. Mrunal s/o Bhaskar Upare,
Aged about 20 years, Occ.- Student,
R/o Shanti Nagar, Phase-III, Behind Shalimar
Traders, Borda, Tq. Warora, District Chandrapur,
presently at Nagpur.

.... **APPELLANTS**

// VERSUS //

1. State of Maharashtra,
through its Police Station Officer,
Police Station Warora, District Chandrapur.
2. Nirmala w/o Janba Maulikar,
Aged 60 years, Occ. House-Help,
R/o Shanti Nagar, Phase-III, Behind Shalimar
Traders Borda, Tq. Warora, District – Chandrapur.

Shri R.R. Vyas, Advocate for appellants.
Ms. H.N. Jaipurkar, A.P.P. for respondent-State.
Shri T.G. Bansod, Advocate for respondent no.2.

CORAM : VINAY JOSHI, J.
DATED : 11/12/2020.

JUDGMENT :

Heard.

2. **ADMIT.** Considering the issue involved in the matter and by consent of the learned Counsel appearing for the parties, Appeal is taken up for final disposal.

3. Both appeals are arising out of the same incident registered vide crime No. 17 of 2020 at Warora Police Station, district Chandrapur. These appellants have approached to the Special Court for grant of pre-arrest bail, however they could not succeed. At the instance of report lodged by one Nirmala Maulikar crime was registered for the offence punishable under Sections 294, 323, 506 read with Section 34 of the Indian Penal Code and also Section 3(1)(W)(I) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC and ST Act').

The appellants are clamming pre-arrest bail by canvassing the case of false implication. It is submitted that since one of the appellant lodged N.C. report as a counter blast false report has been lodged. Moreover, it is submitted that the alleged offence was not within the public view as there were no witnesses and therefore, the provisions of the SC and ST Act would not attract. The State resisted bail by filling affidavit-in-reply. It is contended that the offences is of serious nature and there are abuses in the name of castes. Though the original informant served he is absent.

4. Perusal of First Information Report conveys that there was trite-enmity in between neighborers. Allegedly on the date of

occurrence, two of the appellants have abused informant in the name of castes. The F.I.R. itself states that at the relevant time no other person was present. Therefore, the question regarding applicability of the provisions of the SC and ST Act requires consideration from the point whether the alleged occurrence was within the public view.

5. The appellants have produced copies of NC report bearing NCR No. 12 of 2020 registered by one of the appellant namely Bhaskar Damhare against the informant's husband on 5.1.2020 i.e one day prior to the existing F.I.R. The said very fact *prima facie*, supports the appellants contention about filing of existing F.I.R. as a counter blast to the N.C. report. Already, this Court has granted interim protection to the appellants vide even date order dated 4.2.2020. There is no complaint about misuse of liberty or pressurizing the prosecution witnesses. There are no compelling reasons to curtail the liberty once granted that too after period of 10 months. Having regard to the nature of accusation and other facts, the appellants have made out a case for grant of pre-arrest protection.

6. Both the appeals stands allowed. The impugned common order passed in Misc. Criminal Application No. 12 of 2020 and 13 of 2020 dated 20.01.2020 stands set aside. The interim protection

granted to the appellant namely Bhaskar s/o Vitthalrao Dambhare in Criminal Appeal No. 58 of 2020 on 04.02.2020 and interim protection granted to the appellant namely Bhaskar s/o Mahadeo Upare and Mrunal s/o Bhaskar Upare vide order dated 04.02.2020 in Criminal Appeal No. 59 of 2020 is made absolute on the same terms and conditions with modification of waiver of condition of attendance to concerned Police Station.

7. Both appeals stands allowed and disposed of accordingly.

JUDGE

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