

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

CRIMINAL APPEAL NO. 412/2020

1. Shrikant S/o Devlal Mahalle,
Age 23 years, Occ. Agriculturist,
2. Shivalal S/o. Ramkrishna Mahalle,
Age 65 years, Occ. Agriculturist,
3. Devlal S/o. Ramkrishna Mahalle,
Age 60 years, Occ. Agriculturist,

All applicants are R/o. Nimbi,
Tal. Barshitakli, Dist. Akola.

.... APPELLANTS

// VERSUS //

1. State of Maharashtra,
through its Police Station Officer,
Police Station Pinjar,
Tal. Barshitakli, Dist. Akola.
2. Sugtanand Devidas Motinagre,
Age 31 years, Occ. Agriculturist,
R/o. Nimbhi (Bk.) Tal. Barshitakli,
Dist. Akola.

.... RESPONDENTS

Shri R. R. Vyas, Advocate for appellants.
Shri S. D. Shirpurkar, A. P. P. for respondent No. 1/State.

CORAM : VINAY JOSHI, J.

DATED : 17.12.2020

JUDGMENT

Heard.

2. **Admit.** Considering the issue involved in the matter and by consent of the learned counsel present for the parties, appeal is taken up for final disposal.

3. Crime No. 92/2020 has been registered against appellants at Barshitali Police Station, Dist. Akola for the offences punishable under Sections 324, 354(b), 143, 147, 149, 506 of the Indian Penal Code, Section 4/25 of the Arms Act and Section 3(i)(r)(s), (W)(i)(ii) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Perceiving apprehension of arrest in the said crime, the appellants approached to the Special Court for grant of pre-arrest bail but they could not succeed. Being aggrieved by the order of rejection of pre-arrest bail, this appeal has been preferred.

4. Notice was issued to original informant, however despite service, he remained absent. Rather his presence was felt essential, for the reason that, as per record after lodgment of First Information

Report, informant gave supplementary statement totally contradicting his early version. However, as informant chooses to remain absent, any way matter is to be proceeded as it stands.

5. Initially informant lodged report on 12.07.2020 alleging that on earlier day, all the appellants along with juvenile in conflict with law had assaulted them by means of sword, iron rod, stick and etc. The reason for assault is stated that they being adjacent land owner, there was dispute for which informant made a complaint to public authority. According to the informant, since he has lodged complaint, the appellants got annoyed which resulted into alleged assault. Particularly, it is alleged that appellant No. 1, Shrikant dealt with a sword blow at the hands of informant and his wife. Thus, it is stated that the informant caused injury by sharp edged weapon. Moreover, there are abuses in the name of caste.

6. It is brought to the notice that when the bail application was moved before the Special Court, the Investigating Officer filed reply contending that the informant himself gave supplementary statement stating that no such incident was occurred, however he sustained injury by fall from motor-cycle. In categorical terms, he reiterated that the incident of assault and abuses had not been

occurred but in a fit of anger, he has reported accordingly. However, it reveals that in Special Court, the same informant filed application contending that his supplementary statement was extracted by putting him under pressure. In such scenario, it was appropriate to call informant by notice which is also legal requirement, however, the informant remained absent.

7. The State has resisted this application vide reply-affidavit. Para 3 of the reply refers the supplementary statement of the informant denying the incident. Perusal of case diary discloses that the Investigating Officer has collected injury certificates of informant and his wife. Prima-facie, it appears that injury certificates are inconsistent with the allegation of assault by means of sword i.e. sharp edged weapon. All the injuries are mere scratch marks and caused by blunt object which does not match to the content of First Information Report. In the circumstances, it is difficult to comprehend allegations leveled in the complaint. Of-course, this is a prima-facie expression made by this Court only for the purpose of deciding bail application.

8. Having regard to the said material inconsistency coupled with the informant's supplementary statement about denying the occurrence, the possibility of false implication cannot be ruled out.

9. This Court by exercising judicial discretion has released appellants on interim bail vide order dated 06.11.2020. There is no complaint that the appellants have misused liberty or pressurized informant. It is to be borne in mind that informant appears to be vigilant since in the Special Court, he resisted bail but this time despite service of notice, he remained absent for the reasons best known to him. In the circumstances, the appellants have made out a case for grant of pre-arrest bail since the applicability of the provisions the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act itself is in question.

10. In view of above, appeal stands allowed.

11. Impugned order dated 28.09.2020 passed in Miscellaneous Bail Application No. 546/2020 is hereby quashed and set aside. Interim order dated 06.11.2020 is made absolute on same term and conditions with clarification that condition of attendance shall be followed till filing of charge-sheet.

12. Appeal stands disposed of accordingly.

JUDGE