

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.216 OF 2021

1. Sakharam S/o Dnyanoba Jadhav,
Age : 50 Years, Occ. Agriculture,
2. Rameshwar S/o Bajirao Jadhav,
Age : 52 Years, Occ. Agriculture
3. Sanjay S/o Tukaram Jadhav,
Age : 49 Years, Occ. Agriculture,
4. Sudhir Sakharam Jadhav,
Age : 26 Years, Occ. Agriculture

All Resident of Nandurghat
Taluka Kaij, District Beed.

...Appellants

VERSUS

1. The State of Maharashtra,
Through Police Station,
Kaij, District Beed.
2. Sow. Nisha W/o Shyam Kale,
Age : 32 Years, Occ. Labour

R/o. Hangewadi, Tq. Kaij,
District Beed.

..Respondents

WITH
CRIMINAL APPEAL NO. 235 OF 2021

Sachin S/o Ramkishan @
Ramkrushna Jadhav,
Age : 28 Years, Occ. Agriculture,
R/o. Nandurghat, Tq. Kaij,
District Beed.

..Appellant

Versus

1. The State of Maharashtra
Through Police Station,
Kaij, District Beed.
2. Sow. Nisha W/o Shyam Kale,
Age : 32 Years, Occ. Labour,
R/o. Hangewadi, Tq. Kaij,
District Beed. .. Respondents

...
Advocate for Appellants : Mr. R. T. Deshmukh
APP for Respondent No.1: Ms. G. L. Deshpande
Advocate for Respondent No.2 Dr. Kalpalata Patil-
Bharaswadkar

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CORAM : SURENDRA P. TAVADE, J.

DATE : 23.08.2021

PER COURT :-

Both these appeals are arising out of Crime No. 43 of 2019 registered with Kaij Police Station, District Beed, hence taken for discussion together.

2. By these appeals, the appellants are challenging the order passed by the learned Additional Sessions Judge, Ambejogai, District Beed below Exh No.1 in Misc. Criminal Application No. 67 of 2021, and Misc. Criminal Application No.70 of 2021 respectively. It is contended that respondent No.2 has filed F.I.R against the appellants and some others accused persons under Sections 143, 147, 148, 149, 324, 323 of the Indian Penal Code

and Sections 3(1)(r)(s) and 3(2)(v)(a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. (Herein-after called and referred to as ' Atrocity Act), 1989.

3. It is contended that the names of the appellants are not mentioned in the FIR. It is also contended that the persons who are named in the FIR were ordered to be released on anticipatory bail by the Sessions Court, Ambejogai on 19th March 2019. It is contended that on the basis of the statement of witnesses the appellants have been falsely implicated in the crime. They were very well available in their village but investigating officer has not thought it fit to arrest them since the date of alleged incident i.e. 30.01.2019. It is alleged by the informant that the accused Sachin Kekan, Shiva Bhosale, and others came to her locality and abused her and her family members over her caste and humiliated them. It is also alleged that the appellants and co-accused assaulted the informant and her relatives. It is contended that the role of appellants is not described in the F.I.R or in the statement of witnesses. It is contended that the investigation is over. The charge sheet is filed against the co-accused. It is contended that no *prima facie* case is made out against the appellants but the trial Court has not considered the contents of the bail application and only

rejected the applications of appellants for pre- arrest bail. It is contended that no offence under Scheduled Caste and Scheduled Tribe (Atrocities Act) is made out against the appellants. Similarly, the other offences are not serious in nature. Nothing is to be recovered at the instance of the appellants, therefore, the trial Court ought to have granted bail to the appellants. Therefore, it is prayed that the impugned order passed by the learned Additional Sessions Judge, Ambejogai, District Beed in Misc. Criminal Application No. 67 of 2021 and Misc. Criminal Bail Application No.70 of 2021 be set-aside and the appellants be released on pre-arrest bail.

4. On the other hand the learned A.P.P submits that the investigation is over in respect of the arrested accused. It is contended that the investigating officer has recorded statements of many witnesses including eye witnesses namely Sahebrao Shinde, Balu Shinde, Nitin Kale, Subhash Shinde wherein, the witnesses have categorically identified the appellants. On going through the statements of said witnesses it appears that the said witnesses had named the appellants. It is also contended that the informant and witnesses had sustained injuries. The learned Additional Public Prosecutor also submits that in all fourteen (14) witnesses were injured in

the alleged incident. Therefore, it cannot be said that it was handy work of four to five persons. The informant and the witnesses have categorically stated that the accused persons who are charge sheeted coupled with unknown persons including the present appellants, have taken part in the assault. It is also submitted that since the date of incident i.e. 30.01.2019, the appellants are absconding. The weapons used by them are required to be seized, therefore, the investigation in respect of the role played by the appellants is required to be carried out, therefore, the application be rejected.

5. Heard learned counsel for the appellants, learned Additional Public Prosecutor for respondent No.1 and learned counsel for respondent No.2.

6. On perusal of F.I.R it appears that the allegations of hurling abuses to the informant and witnesses over their caste, are leveled against the present appellants. Therefore, it can be said that no *prima facie* case is made out against the appellants under the provisions of Atrocities Act.

7. As far as the assault is concerned, the informant and witnesses have identified the appellants in the incident. The

witnesses have also attributed act or overt act towards the appellants, therefore, it can be said that the prosecution has *prima facie* established involvement of the appellants in the crime. The incident had taken place on 30.01.2019. The appellants are shown to be absconded. The present appellants were not available for investigation, therefore, the charge sheet is not filed against the present appellants. They are shown as absconded, therefore, in my opinion it is not fit case to enlarge the appellants on pre-arrest bail. The trial Court has considered the abscondance of appellants and their role mentioned in the statement of witnesses properly. Therefore, I do not find any fault in the impugned order. Therefore, I am not inclined to interfere with the same. Hence, I pass the following order.

ORDER

Both these appeals are dismissed.

**(SURENDRA P. TAVADE)
JUDGE**

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