

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 CRIMINAL APPEAL NO. 446 OF 2021

RAJKUMAR S/O ASHOK POLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. Wankhade Manikrao L.
APP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent No.2 : Ms. Neha Kamble (appointed)

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 10th DECEMBER, 2021**

PER COURT:-

1. Heard.
2. The appellant is seeking anticipatory bail in connection with crime no. 154 of 2021 registered with Aundha Nagnath Police Station, District Hingoli for the offence punishable under Sections 307, 324, 447, 143, 147, 148, 149, 120-B, 504, 506 of IPC and Section 3(1)(r), (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. His application below Exhibit 1 in Criminal Bail Application No. 202 of 2021 with similar prayer came to be rejected by the Additional Sessions Judge, Basmathnagar,

District Hingoli by order dated 20.08.2021. In terms of the provisions of Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, this appeal has been preferred against rejection of the said application for anticipatory bail.

3. Learned counsel for the appellant submits that though name of the appellant is mentioned in the FIR, however, except his name and presence along with other co-accused persons, no specific role has been attributed to him. Learned counsel submits that on the basis of the complaint lodged by the brother of the appellant, crime no. 157 of 2021 came to be registered in the same police station against respondent no.2-present informant and five others for having committed the offence punishable under Sections 307, 324, 323, 341, 143, 147, 148 and 149 of IPC. Learned counsel submits that in the said incident, the brother of the appellant, namely Sachin, and one Bibhishan have sustained injuries. Learned counsel submits that in the present crime, the other co-accused persons came to be released on regular bail. There are no antecedents. The appellant is ready to abide the conditions, if imposed by the Court and also ready to cooperate the investigation.

4. Learned counsel for respondent no.2 submits that the appellant and other co-accused persons formed an unlawful assembly and in prosecution of the common object of the said assembly, assaulted respondent no.2-informant. Learned counsel submits that it is a constructive liability and thus all the members of the unlawful assembly are responsible for the act of the other members.

5. Learned APP submits that *prima facie* there is evidence of formation of an unlawful assembly and the appellant was the member of the said assembly. In view of the same, the appellant is also liable for the act of the other members. Furthermore, it is also alleged in the complaint that the appellant along with co-accused Bibhishan and Sachin, extended beating to the informant with the help of stick. Learned APP and learned counsel for respondent no.2 submit that no case is made out for grant of anticipatory bail and the appeal is thus liable to be dismissed.

6. We have carefully gone through the contents of the complaint and also perused the police papers. Though we find name of the appellant mentioned in the FIR, however, except general allegations against him, no individual specific role is attributed to him. Furthermore, on the basis of the complaint lodged by the brother of

the appellant, namely Sachin, crime no. 157 of 2021 came to be registered in the concerned police station. In respect of the same date, place and almost the same time, said Sachin has lodged the complaint against the informant and five others for having committed the offence punishable under Sections 307, 324, 323, 341, 143, 147, 148 and 149 of IPC. We have requested learned APP to call papers of the said crime. Learned APP has placed the same before us. On perusal of the same, we find that the said Sachin, who is also an accused in connection with the present crime, and one Bibhishan have sustained injuries on various parts of their body. It thus appears that in respect of the incident occurred on the same date, time and place, both the parties have lodged complaints against each other. There was almost a free fight between the two groups. It is well settled that whenever there is a free fight, there cannot be formation of any unlawful assembly with common unlawful object and as such, there will be no constructive liability. Under these circumstances, it is necessary to consider the individual acts. So far as the appellant before us is concerned, the allegations have been made to the extent that he was present during the incident and further, general allegations have been made against him that along with other co-accused, he has also extended beating to the informant with the help of stick. There are no antecedents. The other co-accused persons have already been released

on regular bail. We are thus inclined to release the appellant on anticipatory bail. Hence, we proceed to pass the following order:

ORDER

- I. The appeal is hereby allowed.
- II. In the event of arrest of the appellant RAJKUMAR S/O ASHOK POLE in connection with crime no. 154 of 2021 registered with Aundha Nagnath Police Station, District Hingoli for the offence punishable under Sections 307, 324, 447, 143, 147, 148, 149, 120-B, 504, 506 of IPC and Section 3(1)(r), (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on bail on furnishing P.B. of Rs.15,000/- with one surety of the like amount on the following conditions:
 - a. The appellant shall not tamper the prosecution evidence in any manner.
 - b. The appellant shall attend the concerned police station once in a week on every Sunday between 08.00 a.m. to 11.00 a.m. till filing of the charge-sheet and also make himself available as and when required by the investigating Officer for carrying out investigation in connection with the crime.

7. The counsel representing respondent no.2 is the appointed counsel. Thus, we quantify the legal fees of the appointed counsel at Rs.2,000/- (Rupees two thousand only) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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