

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 CRIMINAL APPEAL NO.534 OF 2021
WITH APPLN/2538/2021 IN APEAL/534/2021

PRAKASH VITTHAL THENGE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.D.M. Shinde, Advocate for the appellants.
Ms.R.P. Gaur, APP for the respondent/State.

CORAM : N.R.BORKAR, J.
DATED : 08.12.2021

PC :-

01. This appeal takes an exception to the order passed by the learned Additional Sessions Judge, Nanded dated 07.10.2021.

02. The appellants, who are accused in Crime No.189 of 2021, registered at Hadgaon Police Station for the offences punishable under section 294, 323, 504, 506, 143, 147, 149 of the Indian Penal Code and section 3(1)(r), 3(1)(s), 3(1)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, had filed an application for anticipatory bail. By the order

impugned, said application came to be rejected.

03. I have heard learned Counsel for the appellants and learned APP for the respondent/State.

04. On the last date also learned Counsel for respondent No.2 was not present and therefore to grant one opportunity, the matter was adjourned. Today also, there is no appearance on behalf of respondent No.2.

05. The learned Counsel for the appellants submits that admittedly the incident took place on 20.07.2021. It is submitted that, however, the FIR came to be lodged after six days i.e. on 26.07.2021. It is submitted that, in-fact, in the said incident dated 20.07.2021, appellant No.6 was assaulted and therefore report was lodged by him on 25.07.2021. It is submitted that on the basis of said report, Crime No.188 of 2021 came to be registered against the respondent No.2/complainant and three more persons for the offences punishable under sections 452,

323, 324, 504, 294 read with section 34 of the IPC. It is submitted that as a counter-blast false complaint came to be lodged against the present appellants. It is submitted that the order impugned thus needs to be set aside and the appellants need to be released on anticipatory bail.

06. On the other hand, learned APP for the respondent/State submits that the appellants are involved in a serious case for the offences punishable under the Atrocities Act. It is submitted that there is bar to entertain the application for anticipatory bail under section 18 of the Atrocities Act. It is further submitted that there are eye witnesses to the incident. It is submitted that considering these facts and circumstances, the appeal be dismissed.

07. Admittedly, the incident took place on 20.07.2021. Admittedly, thereafter on 25.07.2021, the appellant No.6 had lodged report alleging assault on him

and on the basis of said report Crime No.188 of 2021 for the offence under section 452, 323, 324, 504 294 read with section 34 of the IPC came to be registered against the respondent No.2 and three more persons. Learned Counsel for the appellants has placed on record injury certificate of appellant No.6. It appears from the said injury certificate of appellant No.6 that he sustained injury on his head and said injury was required to be sutured. Admittedly, the FIR in the present case came to be lodged after lodging of report by appellant No.6. The only explanation given by the complainant for lodging the complaint after six days is that after the incident, she was frightened. Prima facie explanation is not convincing.

08. In the result, following order is passed :-

O R D E R

- i. Appeal is allowed.
- ii. The order impugned is set aside.

iii. In the event of arrest of the appellants in connection with Crime No.189 of 2021 registered with Hadgaon Police Station, Dist. Nanded, for the offences punishable under sections 294, 323, 504, 506, 143, 147, 149 of the Indian Penal Code and sections, 3(1)(r), 3(1)(s) and 3(1)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellants shall be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) each with one surety in the like amount.

iv. The appellants shall attend the concerned police station once in a week i.e. on every Monday between 11.00 a.m. to 02.00 p.m., till filing of the charge-sheet and shall not indulge in any criminal activity.

v. In view of disposal of the appeal, application No.2538 of 2021 does not survive and disposed of accordingly.

[N.R.BORKAR, J.]