

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 113 OF 2021

Shri. Suryakant Sonu Khotkar

Age : 72 years, Occ. : Nil

R/at Khotkar Mala, Ozar,

Tal. Niphad, District Nashik

.... Appellant

Vs.

1. The State of Maharashtra

Through its Deputy Superintendent
of Police, Niphad Rural,
Nashik.

2. Smt. Suman Shivaji Bhadke

Age : 60 years, Occ.: Labourer,

R/o : Near BSNL Office,

Ozar

.... Respondents

**ALONGWITH
CRIMINAL APPEAL NO. 114 OF 2021**

Shri. Yogesh Ashok Khotkar

Age : 30 Years, Occ.: Business

R/at Khotkar Mala, Ozar,

Tal. Niphad, District Nashik

.... Appellant

Vs.

1. The State of Maharashtra

Through its Deputy Superintendent

of Police, Niphad Rural,
Nashik.

2. Smt. Suman Shivaji Bhadke
Age : 60 years, Occ.: Labourer,
R/o : Near BSNL Office,
Ozar, Tal. Niphad,
District Nashik

.... Respondents

.....

Mr. Anuj Tiwari for Appellants.

Mr. Karansingh Rajput appointed Advocate for Respondent No.2.
Mrs. S.D. Shinde, APP for Respondent- State.

**Coram : S.S. SHINDE AND
MANISH PITALE, JJ.**

**JUDGMENT RESERVED ON : 24.03.2021
JUDGMENT PRONOUNCED ON : 09.04.2021**

JUDGMENT : (PER MANISH PITALE, J.)

1. These are appeals filed by the original accused Nos. 5 and 7 challenging impugned order dated 12th January, 2021 whereby the Court of Additional Sessions Judge, Niphad (“the Sessions Court”) rejected the application for bail moved by the Appellants alongwith a co-accused person.

2. In the present case, an F.I.R. dated 21st December, 2020 stood registered against the Appellants and co-accused persons for offences under Sections 326, 324, 323, 504, 506, 143, 147 and 148 of the Indian Penal Code as also Sections 3(1)(r) (s) and 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act") and 135 of Mumbai Police Act.

3. As per the original informant (Respondent No.2) herein, a 60 year old aged woman, the Appellants alongwith co-accused persons came in front of her house. They abused her and her son in the name of their caste and threatened them. The accused were armed with wooden logs and when neighbours of the Respondent No. 2 sought to intervene in the matter, the accused persons including the Appellants herein assaulted the informant and her son with wooden logs, stones and fists and kick blows. As a consequence, the informant and others received injuries, for which they had to be admitted to the hospital. In pursuance of registration

of the said F.I.R., the investigation was undertaken and statements of witnesses were recorded.

4. The Appellants alongwith co-accused person moved bail application before the Sessions Court. By the impugned order, the application was rejected. The Sessions Court observed in the impugned order that the complainant had specifically raised grievance about injury by sharp edged weapon and yet the investigating officer had not taken pains to recover such sharp-edged weapon. The injury suffered by the informant and others were noted and the Sessions Court observed that the Police machinery might be under influence from the side of the accused persons and that there was every likelihood of the witnesses being pressurised if the accused persons, including the Appellants, were released on bail. After making such observations, the Sessions Court rejected the bail application of the Appellants by the impugned order.

5. Mr. Anuj Tiwari, learned counsel appearing for the Appellants in both these appeals invited our attention to the aforesaid observations made in the impugned order passed by the Sessions Court and vehemently submitted that the Sessions Court had wrongly concluded that the investigating officer appeared to be under the influence of the accused persons. It was submitted that when the documents filed alongwith the charge-sheet dated 18th February, 2021 revealed injuries to the injured persons only by blunt objects like wooden sticks and stones, there was no basis for the Sessions Court to have made aforesaid observations. According to the learned counsel for the Appellants, the Sessions Court completely misdirected itself but proceeding on the presumption that there were sharp edged weapons used and recovery of the same was yet to be made. According to the learned counsel for the Appellants, this aspect influenced the decision of the Sessions Court and that the material on record was not properly appreciated.

6. Learned counsel appearing for the Appellants invited attention of this Court to the charge-sheet and the documents filed therewith. It was submitted that the specific overt-acts were not attributed to the Appellants and that they ought not to be continued in custody on the basis of general allegations. It was further submitted that since investigation was over and charge-sheet was already filed, no further purpose would be served by keeping the Appellants behind bars.

7 Mr. Karansingh Rajput, learned counsel appointed for appearing on behalf of Respondent No.2 (original informant), submitted that even if there were certain observations made in the impugned order by the Sessions Court regarding injuries by sharp edged weapons, that was not the only factor which influenced the Sessions Court to reject the bail application of the Appellants. It was submitted that the role of the Appellants was appreciated by the Sessions Court on the basis of available material. It was further submitted that the charge-sheet and the material available on record,

particularly the statements of witnesses, demonstrated that the Appellants were present at the time of incident and that specific acts were not indeed attributed to them. It was further submitted that the medical documents on record demonstrated the nature of injuries suffered by not only the informant but other victims also. On this basis, it was submitted that the appeals deserve to be dismissed.

8. Mrs. S.D. Shinde, learned APP appeared for the Respondent- State and she supported the impugned order passed by the Sessions Court.

9. Heard learned counsel appearing for rival parties and perused the material on record.

10. In the present case, offences have been registered against the Appellants not only under the provisions of the Indian Penal Code but also under the provisions of Atrocities Act.

11. A perusal of the statement made by the Respondent No. 2 (original informant), which led to registration of F.I.R. would show that she had specifically described the manner in which the incident took place. The Appellants before this Court were specifically named in the F.I.R. The fact that the Appellants participated in the verbal and actual assault on the complainant and other victims, was stated in the F.I.R. A perusal of the statements of witnesses recorded during the course of investigation, shows that the said witnesses have consistently stated about the presence and role of the Appellants in the incident that took place on 20th December, 2020. The documents filed alongwith the charge-sheet, particularly Medico-Legal Certificates show that the informant and others suffered serious injuries, including fractures and that such injuries were inflicted by blunt objects like wooden sticks and stones.

12. It is significant that in the present case, as many as six persons including the informant suffered injuries and one of them suffered head injury also. The F.I.R. was registered against the

Appellants and other accused persons as they were members of an unlawful assembly. Therefore, as long as presence of the Appellants was specifically stated by the informant in her statement leading to registration of F.I.R., as also witnesses during the course of investigation, the contention raised on behalf of the Appellants that they did not play any major role in the incident, can be of no assistance for seeking bail.

13. The nature of injuries suffered by the victims including informant, who is a 60 years old woman, shows the brutal manner in which the assault was carried out and at this stage, the presence of the Appellants alongwith other accused persons is prima facie made out by the material on record.

14. In the present case, offences under the provisions of Atrocities Act has also been registered against the Appellants. These pertain to intentional insults, humiliation, intimidation and abuse hurled against members of the scheduled caste and scheduled tribe

community and such offences being committed with the knowledge that the victim belongs to such community. In the present case, the manner in which verbal abuse pertaining to caste of the informant was hurled at her, has been stated elaborately in her statement leading to registration of F.I.R.. The statements of witnesses recorded during the course of investigation also support the aforesaid statement. This shows that not only were the Appellants members of unlawful assembly that launched physical assault on the informant and other victims, they were also prima facie part of the insult, humiliation and verbal abuse launched against the informant and other victims. In such a situation, it cannot be said that the Sessions Court committed any error in rejecting the bail application of the Appellants.

15. It is also gathered from the material on record that the Appellants and the informant, as also the other victims are residents of the same locality. This indicates that there is every possibility of the Appellants pressurizing the informant and the witnesses if

released on bail and there is possibility of further untoward incidents happening. This is another reason why the impugned order deserves to be sustained.

16. Insofar as the contention raised on behalf of the Appellants that the Sessions Court placed unnecessary emphasis on alleged injuries suffered by the informant by sharp edged weapon and failure of the investigating officer to recover the same, we are of the opinion that even if the said observation was made, the Medico-Legal certificates demonstrate in detail how the victims had suffered serious bone injuries, as also fractures on vital parts of their bodies, as a result of the assault launched by the unlawful assembly of accused persons, of which the Appellants were alleged to be members. Therefore, we do not find any substance in the aforesaid contention raised on behalf of the Appellants.

17. In view of above, we find that there is no substance in the present appeals. Accordingly, they are dismissed. Needless to say,

the observations made in the order are restricted to deciding the present appeals.

18. We appreciate the assistance rendered by Mr. Karansingh Rajput, learned Advocate appointed on behalf of the Respondent No.2 (original informant). His fees for the appearance is quantified at Rs.10,000/- to be paid within one month from receipt of this order by High Court Legal Services Committee, Mumbai.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)