

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.273 OF 2020

1. Smt Neeta w/o Madhukar Gondane,
Aged 40 years, Occ. Household
 2. Suraj s/o Gangadhar Chaudhari,
Aged about 31 years, Occ. Private,
Both R/o. Dahegaon (Rangari),
Tah. Saoner, Dist. Nagpur.
- APPELLANTS**

// VERSUS //

1. State of Maharashtra through
Police Station Khaparkheda,
Dist. Nagpur.
 2. Naresh s/o Manohar Gajbhiye
Aged 28 years, Occ. Service,
R/o. Dahegaon, Tah. Saoner,
Dist. Nagpur.
- RESPONDENTS**

Shri Rajesh S. Naik, Advocate for appellant.
Shri I. G. Damle, APP for respondent no.1/State.

CORAM : VINAY JOSHI, J.

DATED : 11/08/2021

ORAL JUDGMENT :

Admit.

2. Heard finally with consent of both sides.

3. Apprehending to be arrested in Crime No. 172 of 2014 registered with Police Station, Khaparkheda, District Nagpur, for the offences punishable under Sections 143, 147 and 149 of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellants have prayed for grant of pre-arrest protection. The State resisted the appeal by filing reply/ affidavit. This Court has granted interim protection on 21.08.2020, which is prevailing till date.

4. The FIR discloses that the alleged incident took place on 16.09.2014, on the basis of which, police have registered crime for commission of offences punishable under Sections 143, 147 and 149 of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is alleged that on the date of occurrence number of persons including both appellants interrupted the informant, beat him by fist blows, kicks and abused in the name of caste. It is argued that there is no sufficient material to infer essentials to constitute an offence under the SC/ST Act. The allegations of beating are of general nature. As regards to alleged abuses are concerned, they relates to appellant Neeta and one Namdev. According to appellants, it is quite improbable that two persons would abuse simultaneously in the same fashion. Moreover it requires

consideration whether the act was with intent to humiliate the person belonging to backward class.

5. The occurrence is of the year 2014. The appellants have approached to this Court in Criminal Application No.631 of 2014 with 651 of 2014 for quashing of FIR, in which this Court has granted interim protection till the year 2019. In existing appeal the interim protection is granted on 21.08.2020 on certain terms and conditions. There is no complaint of misuse of liberty or pressurizing the prosecution witness. Nothing is to be seized at the instance of applicants. Having regard to the fact that the crime is very old and there is question about applicability of the SC/ST Act, the appellants liberty can be protected.

6. In view of that following order:

- (i) Criminal Appeal stands allowed. The impugned order dated 17.03.2020 passed by Additional Sessions Judge- 11, Nagpur in Misc. Criminal Application No.590 of 2020, is hereby quashed and set aside.
- (iii) Ad-interim order dated 21.08.2020 is hereby made absolute on same terms and conditions with modification that they shall attend concerned Police Station as and when required.

JUDGE