

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

CRIMINAL APPEAL NO.261 OF 2021

Anil s/o Bhaurao Thakare,
Aged about 50 years,
Occ. Business,
R/o. Dahegaon Rangari,
Khaparkheda, Tah. Saoner,
Dist. Nagpur.

..... APPELLANT

// VERSUS //

1. State of Maharashtra through
P.S.O, Police Station Khaparkheda,
Dist. Nagpur.
2. Madhukar S/o Janardhan Gondane,
Aged about 49 years,
Occ. Service, R/o. Dahegaon Rangari,
Tah. Saoner, Dist. Nagpur.

.... RESPONDENTS

WITH

CRIMINAL APPEAL NO.510 OF 2020

Shri Kishor S/o Shankar Choudhari,
Aged about 48 years,
Occ. Social Worker,
R/o. Dahegaon Rangari, Tahsil Saoner,
Dist. Nagpur.

..... APPELLANT

// VERSUS //

1. State of Maharashtra through
the Police Station Officer,
Police Station, Khaparkheda, Dist. Nagpur.
2. Madhukar S/o Janardhan Gondhane,
Aged about 49 years,
Occ. Service, R/o. Dahegaon Rangari,
Tah. Saoner, Dist. Nagpur.

.... RESPONDENTS

Shri C. R. Thakur, Advocate for appellant in Appeal No.261/2021.
Shri P. S. Tiwari, Advocate for appellant in Appeal No.510/2020.
Shri I. J. Damle, APP for respondent no.1/State.

CORAM : VINAY JOSHI, J.

DATED : 11/08/2021

ORAL JUDGMENT :

Admit.

2. Heard finally with the consent of both sides.

3. Both these appeals are arising out of Crime No.169 of 2014, registered with Khaparkheda Police Station, District Nagpur, for the offences punishable under Sections 143, 147, 149 and 323 of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Both appellants are claiming pre-arrest protection in apprehension of their arrest in aforesaid crime.

4. The State resisted both appeals by filing reply / affidavit. With the assistance of both sides, contents of FIR are gone into. The informant has alleged that at the instance of installation of Mutton Market dispute arose in which applicants and some others have abused

him in the name of caste. Reading of the FIR discloses that the allegations are of general nature against several persons. It is submitted that due to village politics, false report has been lodged since one of the appellant Kishor was husband of the then Sarpanch. It is matter of record that the appellants initially approached to this Court for quashing of First Information Report by filing Criminal Application No.680 of 2014, in which this Court has granted protection by stating that no coercive steps be taken against them. The said interim protection prevailed for a long period of five years.

5. Learned counsel for the appellant submits that the essential ingredients to constitute the offence punishable under Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act are not made out, which requires consideration. It is argued that there is no material to infer that the offence took place in public view meaning thereby requisite essentials are not made out. Already this Court has granted interim protection to both appellants. There is no complaint that appellants have either misused the liberty or threatened to the witnesses. Having regard to the fact that the offence took place prior to five years, now there is no purpose in curtailing appellants liberty. In view of that, both appeal succeeds. Hence, following order.

ORDER

- i). Criminal Appeal No.261 of 2021 and 510 of 2020 are allowed.
- ii) In Criminal Appeal No. 261 of 2021 the impugned order dated 15.06.2021 passed by Additional Sessions Judge-13, Nagpur in Misc. Criminal Application No.829 of 2021 is hereby quashed and set aside.
- iii) In Criminal Appeal No.510 of 2020, the impugned order dated 17.03.2020 passed by Additional Sessions Judge – 13, Nagpur in Misc. Criminal Application No.446/2020 is hereby quashed and set aside.
- iv) Ad-interim order dated 07.07.2021 passed in Criminal No.261 of 2021 and ad-interim order dated 21.12.2020 passed in Criminal Appeal No.510 of 2020 are hereby made absolute on same terms and conditions with a rider that appellants shall attend concerned Police Station as and when called.
- v) Both appeals stand disposed of accordingly.

JUDGE