

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 362/2021

1. Gajanan S/o Wamanrao Pardhi,
Aged about 57 yrs, Occ. Agriculturist,
(Police Patil of Village Ugwa)
2. Santosh S/o Wamanrao Pardhi,
Aged about 45 yrs, Occ. Agriculturist,
3. Sarvajeet S/o Gajanan Pardhi,
Aged about 23 yrs, Occ. Education &
part time job,

All R/o. Village Ugwa, Tq. & Dist. Akola.

.... **APPELLANTS**

// VERSUS //

1. State of Maharashtra,
through P. S. O. Akot File, Akola,
2. Vishal S/o Vijay Bhatkule,
Aged about 29 yrs, Occ. Agriculturist,
R/o. Village Ugwa, Tq. & Dist. Akola
Mb. No. 9373540070,
at present in Central Jail, Akola.

.... **RESPONDENTS**

Shri Hemsingh M. Mohta, Advocate for appellants.
Shri S. D. Shirpurkar, A. P. P. for respondent No. 1/State.
Respondent No. 2 served.

CORAM : VINAY JOSHI, J.
DATED : 14.10.2021

JUDGMENT

Heard.

2. **Admit.** By consent of the learned counsel present for the parties, appeal is taken up for final disposal.

3. The appellant Nos. 1 to 3 are seeking for pre-arrest protection in Crime No. 747/2021 registered with Police Station Akot File, Akola for offence punishable under Sections 323, 324, 506 read with Section 34 Indian Penal Code and Sections 3(2)(va), 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (short 'SC and ST Act'). The State resisted bail by filing reply-affidavit.

4. It is the informant's case that on 11.08.2021 around 08.00 a.m. while he was proceeding along with his mother, dispute arose at the instance of dog barking with appellant No. 1 Gajanan and appellant No. 2 Santosh. The informant stated that appellants Gajanan and Santosh abused his mother in the name of caste. Thereafter, appellant No.1 Gajanan gave a slap to informant's mother, whilst applicant No. 3 Sarvajeet assaulted informant by means of iron rod.

Likewise, appellant No. 2 Santosh dealt a stick blow to the informant's nephew. The said incident was witnessed by two villagers, hence the report.

5. Learned counsel for the appellants would submit that the existing First Information Report (FIR) is nothing but a counterblast to the earlier report lodged by appellant No. 1 Gajanan registered vide Crime No. 746/2021, two hours preceeding to the occurrence. He has produced the copy of earlier FIR in which appellant No. 1 Gajanan stated that on the same day in the morning around 07.30 a.m., informant Vishal along with co-accused beat appellants and their family members by means of iron rod. The Police registered said earlier crime for offence punishable under Sections 143, 147, 148, 149, 324, 325, 326 and 506 of the Indian Penal Code. Since applicant No. 1 was Police Patila, latter on, Section 353 of the Indian Penal Code has been added.

6. It is argued that in the earlier incident occurred at 07:30 a.m., all applicants got severely injured, therefore, it is impossible for them to abuse and assault informant after half an hour for which existing FIR has been lodged. In support of said contention, appellants have produced injury certificate coupled with photographs

to show that they sustained injury of grave nature.

7. Learned counsel for the appellants by placing reliance on the decision of this Court in case of **Sangita Popat Bhosale & ors. Vs. the State of Maharashtra and anr., 2021 ALL MR (Cri) 2334** submitted that only on the basis of contents of FIR, it may not be concluded that pre-arrest bail is not maintainable. In the said decision, this Court has observed that besides the contents of FIR, the aspect whether FIR is tainted or not has to be considered. In case at hand, on the background of counter FIR lodged prior in time, the matter requires consideration.

8. Learned counsel for the applicants has submitted that the allegation of abuses were against appellant No. 1 Ganjana and appellant No. 2 Santosh. The submission is that it is not possible for both of them to give abuses in chorus. The Police Report says that the informant belongs to 'Buddha' Community which is not a caste. During trial, the prosecution has to prove that the informant belongs to the member of Scheduled Caste or Scheduled Tribe. There is no reference that the appellants do not belong to the member of Scheduled Caste or Scheduled Tribe. It is also submitted that the statutory bar would not apply as there was no reason for appellants to know about the caste of

informant and the contents of FIR are tainted one. Prima facie, there is substance in the contention that the provisions of SC and ST Act may not become applicable.

9. Besides the provisions of SC and ST Act, rest of the offences are bailable. Case paper contains injury certificate of informant Vishal only. The said certificate indicates that he sustained blunt trauma over forearm, over left leg, back and chest. Though informant stated that he was assaulted at his head by iron rod, besides blunt trauma, there is no other injury of severe nature. Medical Officer has opined that all injuries are of simple nature. There is no necessity of custodial interrogation.

10. Learned counsel for the appellants has pointed from the reply-affidavit filed by State in Trial Court that one cited witness to the occurrence namely Nagasen Shirsat refused to say anything about the incident to the Police. There is no complaint that the appellant have misused the liberty while on interim bail nor prosecution denied the attendance of appellants to the Police Station. Considering the nature of accusation, applicants' liberty can be protected by directing them to join the course of investigation. Hence following order:-

(I) Appeal stands allowed and disposed of.

(II) Impugned order dated 27.08.2021 passed by the Additional Sessions Judge, Akola, is hereby quashed and set aside.

(III) Ad-interim order dated 03.09.2021 is hereby made absolute upon same terms and conditions.

(IV) The appellants shall continue to attend concerned Police Station till filing of charge-sheet or for the period of 60 days whichever is earlier.

JUDGE

Gohane.