

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

CRIMINAL APPEAL NO.373 OF 2021

Suraj s/o Haribhau Barai,
Aged about 25 years, Occ- Agriculturist,
R/o Narayanpur (Kolse),
Tahasil – Samudrapur, Dist. Wardha.

.....APPELLANT

...V E R S U S...

1. State of Maharashtra,
Through PSO, Samudrapur,
Tah. Samudrapur, Dist. Wardha.
2. Jyoti W/o Shatrughana Sadmake,
Aged 44 yrs, Occ: Agriculture Labour.
R/o Ward No.3, Narayanpur (Kolse),
Tahasil – Samudrapur, Dist. Wardha.

....**RESPONDENTS**

WITH

CRIMINAL APPEAL NO.369 OF 2021

Khushal s/o Askhok Barai,
Aged about 28 years, Occ- Lecturer,
R/o Narayanpur Kolse,
Tahasil – Samudrapur, Dist. Wardha.

.....APPELLANT

...V E R S U S...

1. State of Maharashtra,
Through PSO, Samudrapur,
Tah. Samudrapur, Dist. Wardha.
2. Jyoti W/o Shatrughan Sadmake,
Aged 46 yrs, Occ: Agriculture Labour.
R/o Narayanpur (Kolse),
Tahasil – Samudrapur, Dist. Wardha.

....**RESPONDENTS**

WITH

CRIMINAL APPEAL NO.371 OF 2021

1. Dadarao s/o Shriram Barai ,
Aged about 65 years, Occ- Agriculturist,
2. Atul s/o Ramesh Barai,
Aged about 27 years, Occ: Agriculturist,

Both R/o Narayanpur (Kolse),
Tahasil – Samudrapur, Dist. Wardha.

.....APPELLANTS**...V E R S U S...**

1. State of Maharashtra,
Through PSO, Samudrapur,
Tah. Samudrapur, Dist. Wardha.
2. Jyoti W/o Shatrughana Sadmaka,
Aged 44 yrs, Occ: Agriculture Labour.
R/o Ward No.3, Narayanpur (Kolse),
Tahasil – Samudrapur, Dist. Wardha.

....RESPONDENTS

Shri M.V. Rai, Advocate for appellants. (Appeal Nos.373/2021 & 371/2021.)
Shri V.S. Mishra, Advocate for appellant (Appeal No.369/2021)
Shri M.J. Khan, Additional Public Prosecutor for respondent no.1 in all appeals.

CORAM:- M.S. SONAK AND PUSHPA V. GANEDIWALA, JJ.
DATE :- 17th NOVEMBER, 2021

ORAL JUDGMENT (PER : M.S. SONAK, J.)

At the outset, learned counsel for the appellants points out that private respondent no.2 in each of these appeals have been duly served in the matter.

2. Heard Shri M.V. Rai and Shri V.S. Mishra, learned counsel for the appellants, and Shri M.J. Khan, learned Additional Public Prosecutor for respondent no.1-State in all these appeals.

3. **ADMIT.**

4. Learned counsel for the parties agree that all these appeals can be disposed of by common judgment and order since they relate same incident and even the impugned order by which the appellants' application for anticipatory bail came to be rejected is common.

5. We have perused the record, including the report based on which the F.I.R. came to be lodged. From the perusal of the report, we find that prima facie no case has been made out to invoke the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The allegations concern two groups of neighbors and the fight that ensued between them. There are complaints and counter complaints by both groups. Merely because some of the persons who are assaulted by the present appellants may have belonged to Scheduled Castes or Scheduled Tribes category, that by itself, is not sufficient for applying the provisions of the said Act. There is no allegation that the alleged assault or the altercation was on account of such persons belonging to the Scheduled Castes or Scheduled Tribes category or that the appellants even knew that such persons belonged to the said categories.

6. In the impugned order, the learned Additional Sessions Judge has referred to the seriousness of the offense. No doubt, that is one of the relevant factors. However, in this case, the allegations were that the group of about seven persons, which include the four appellants before us, assaulted and the group of about ten persons. Injuries were sustained by eight persons. Out of this, the injuries sustained by one of the persons appear to be, *prima facie*, quite serious.

7. In the report, the allegation is that one Haribhau assaulted this person with an axe resulting in the fracture of his skull. The injuries sustained by the other persons at least *prima facie* cannot be regarded as serious. Even prosecution alleges that such injuries were caused by the use of sticks by the present appellants and others.

8. Three of the alleged assailants, including Haribhau, were arrested. All of these three alleged assailants including Haribhau have already been enlarged on regular bail. There is a record that indicates that about 15 sticks were seized at the site itself. Therefore, the contention of the learned Additional Public Prosecutor that sticks used by the present appellants are required

to be recovered, cannot be a valid ground for denying appellants anticipatory bail.

9. The record does not indicate that the appellants have any criminal antecedents. The record, *prima facie*, indicates that this is a fight between two neighboring groups, and based on the incident in question, complaints and counter complaints were made. Even based on the complaints of the appellants, some persons belonging to the opposite group also came to be arrested and the rest were released on anticipatory bail.

10. According to us, all the aforesaid circumstances were required to be considered by the learned Additional Sessions Judge, and since, the same have not been considered, the impugned order denying anticipatory bail warrants interference. Accordingly, we pass the following order:

ORDER

- i. The Criminal Appeals are allowed.
- ii. In the event of arrest of the Appellants, in connection with Crime No.257 of 2021 registered with Police Station, Samudrapur, District Wardha for the offenses punishable under Sections 143, 144, 147, 148, 294, 307, 324, 326, 504, and 506 of the Indian

Penal Code and Section 3(2) (v), 3(2) (va) and 3 (1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989, appellants be released on bail on they furnishing PR bond Rs.25,000/- with one solvent surety in like amount by each of them.

iii. The appellants shall attend the Police Station, Samudrapur District Wardha once a week i.e. on every Sunday between 11:00 a.m. to 02:00 p.m. till filing of the charge-sheet.

iv. The appellants shall not tamper with the prosecution evidence or shall not try to influence the prosecution witnesses.

v. The observations made in this order are prima facie in nature and made only to decide these appeals, the trial court need not be influenced by any of the observations made in this order.

vi. The appeals stand disposed of. Pending applications, if any, are also disposed of.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)

Wagh