

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

CRIMINAL APPEAL NO.530 OF 2020

APPELLANTS : 1. Shantabai wd/o Baburao Ejale,
 Aged about 62 years, Occ. Agriculturist.

2. Rekha w/d Dattatraya Ejale,
 Aged about 30 years,
 Occ. Agriculturist

Both R/o Sura, Tah. Deulgaon Raja,
 Dist. Buldhana.

--VERSUS--

RESPONDENTS : 1. State of Maharashtra,
 Through P.S.O., Andhera,
 Dist. Buldhana

2. Geeta w/o Bhanudas Danake,
 aged 30 years, Occ. Agriculturist,
 R/o Sura, Tah. Deulgaon Raja,
 Dist. Buldhana.

 Shri. M. Rai, Advocate for appellants
 Ms. S. Haider, APP for respondent/State
 Mrs. D. I. Charlewar, Advocate (Appointed) for respondent no.2.

CORAM : **N. B. SURYAWANSHI, J.**
DATED : **04/03/2021**

ORAL JUDGMENT

By this appeal, the appellants challenge the impugned order passed by the learned Special Judge, Buldana in Anticipatory Bail Application No.391 of 2020, thereby refusing their prayer for grant of anticipatory bail.

2. The appellants are accused in Crime No. 387 of 2020 registered with Andhera Police Station for offences punishable under Sections 323, 504 and 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(R)(S) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the information given by the second respondent. It is the contention of the second respondent that when the informant was going to her field, on account of dispute of pathway going to her agricultural land, the appellants abused her in the name of her caste. They caught her hair and beaten her with slaps and blows and threatened to kill her.

3. Heard the learned Advocate for the appellants, the learned Additional Public Prosecutor for the respondent/State and the learned Advocate for the second respondent. Perused the case diary.

4. It appears that there is a dispute of pathway between the first appellant on one hand and the husband of the second respondent and others on the other hand. The first appellant has filed Civil Suit No.70 of 2020 against fifteen defendants seeking relief of declaration that the defendants have no right of way from the agricultural field of the plaintiff

(first appellant). The husband of the second respondent is defendant no.7 in the said suit.

5. Revenue proceeding initiated by the first appellant against the defendants in the civil suit is pending before the Tahsildar, Deulgaon Raja.

6. On 01.10.2020, a complaint was forwarded by the first appellant against the defendants to the Sub Divisional Police Officer, Deulgaon Raja and to the Police Station Officer of Andhera Police Station complaining that all the persons named in the complaint illegally entered in her agricultural land with axe, sickle and sticks and by cutting the grass in her field, they tried to create a pathway. When she tried to stop them, they threatened her. A threat that she would be implicated in false offence was also given to her. The first appellant, therefore, claimed that she was a widow having no support and her son is ailing and he is not in a position to get up from bed and the accused were trying to take advantage of her position. Similar complaints from time to time were forwarded by the first appellant. On 12.10.2020, the first appellant lodged a private complaint against the defendants including the husband of the second respondent, alleging commission of offence under Section 427, 447, 504 and 506-B read with Section 34 of the

Indian Penal Code, contending that on 01.10.2020, all the accused persons in collusion with each other entered the agricultural field of the first appellant and forcibly tried to create a pathway.

7. On 04.12.2020, the first appellant had lodged F.I.R. at Crime No.385 of 2020 with Andhera Police Station for offence punishable under Sections 294 and 506 read with Section 34 of the Indian Penal Code against Vimal Kisan Khedekar, Lata Arun Cheke and Bhanudas Kashinath Danake (the husband of the second respondent) alleging that when she went in her field with JCB, as she wanted to dig a channel, the accused persons obstructed her and assaulted her by catching her hair and abused her in filthy language.

8. The F.I.R. in question is lodged on 05.12.2020, wherein the second respondent has alleged that on 04.12.2020 at about 10.00 a.m. when she was going towards her field Gat No.159, both the appellants came there and both of them in one voice called her by the name of her caste and started abusing her in the name of caste. The second appellant gave her slaps and fist blows. On hearing her noise, two ladies working in the nearby field, came there and separated her from the accused appellants.

9. It appears from the record that the appellant from time to time has complained about the activities of the defendants accused persons. She has also filed civil dispute. Her F.I.R. i.e. Crime No.385 of 2020 was lodged earlier. With a view to give counterblast to the same, the F.I.R. in question is lodged by the second respondent. The allegations in the F.I.R. that in one voice, both the appellants uttered the same words at the same time appears improbable. The record further reveals that though the second respondent claimed that she was assaulted by giving slaps and fist blows, she refused to submit herself to the medical examination, this further creates doubt about her version. Taking into consideration the fact of pendency of the civil dispute and criminal complaints lodged by 1st appellant, I am *prima facie* of the view that the second respondent has *malafide* lodged present F.I.R. against the appellants.

10. The learned trial Court has failed to take into consideration the possibility of false implication of the appellants and the fact that the allegations in F.I.R. *prima facie* do not appear to be probable and do not inspire confidence. The learned trial Court has failed to take into consideration the fact that the custodial interrogation of the appellants is not necessary in the peculiar fact of the present case.

11. At the time of issuance of notice, interim protection was granted to the appellants on 28.12.2020 and the appellants have cooperated in the investigation. There are no allegations that the appellants have misused the facility of the bail. The offence is registered on 05.12.2020 and by this time, the investigation is almost complete. Hence, the custodial interrogation of the appellants is not necessary in these fact of the case.

12. The learned Advocate for the second respondent submitted that the appellants have tried to threaten the second respondent and accordingly, at the instance of the second respondent, a complaint of non-cognizable offence lodged by the second respondent. Afterthought complaint appears to have been lodged on 26.01.2021 i.e. after about one month from the date on which, the appellants were granted interim protection by this Court. Therefore, in my opinion that cannot be a ground to deny relief to the appellants.

13. In view of the aforestated reasons, the appeal deserves to be allowed, hence the following order :

- i) The Criminal Appeal No.530 of 2020 is allowed.
- ii) The interim order passed by this Court on 28.12.2020, is hereby confirmed.
- iii) The impugned order dated 22.12.2020 passed by the learned Special Judge, Buldana in Anticipatory Bail Application No.391 of 2020 is quashed and set aside.
- iv) Till the filing of charge sheet, the appellants shall attend the Police Station as and when called by the Investigating Officer.
- v) It is made clear that the observations made in this order are *prima facie* and the learned trial Court shall not be influenced by them at the time of trial.
- vi) The fees of the learned Advocate (appointed) for the second respondent are decided at Rs.2500/-.

The High Court Legal Services Sub-Committee, Nagpur to pay the fees to the learned advocate (appointed) within a period of four weeks from today.

JUDGE