

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

CRIMINAL APPEAL NO. 587/2018

- 1] **Sau. Varsha W/o Vijay Patkar,**
Age 43 years, Occ. Household,
- 2] **Mr. Vijay S/o Govardhan Patkar,**
Age 52 years, Occ. Service,
- All R/o. Mahsul Colony, Akola

.... **APPELLANT(S)**

// VERSUS //

- 1] **State of Maharashtra,**
Through Police Station Officer,
Police Station, Civil Lines, Akola
- 2] **Ramesh Gotiram Wankhade,**
Age 64 years, Occ. Retired
R/o. Mahsul Colony,
Akola

.... **RESPONDENT(S)**

Shri R.R. Vyas, Advocate for the appellant(s)
Shri T.A. Mirza, APP for the respondent no. 1
Shri S. Katkar, Advocate for the respondent no. 2

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.
APRIL 27, 2021

ORAL JUDGMENT : (PER:- AMIT B. BORKAR, J.)

- 1] Heard.

2] **ADMIT.**

3] This is an appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989") challenging the order dated 11/09/2018 passed by the Special Judge, Akola in Misc. Criminal Application No. 628/2018 rejecting an application under Section 438 of the Code of Criminal Procedure in relation to Crime No. 203/2017 for the offences punishable under Sections 392, 294 and 34 of the Indian Penal Code and Sections 3(1)(g) and 3(1)(r)(s) of the Act of 1989.

4] The first information report came to be registered against the appellants at the instance of the respondent no. 2. It is alleged that on 06/06/2017 when the construction of the house of the appellants was going on, the respondent no. 2 tried to restrain the appellants from constructing over the area of the respondent no. 2. The appellants abused the respondent no. 2 in the name of caste and forcefully snatched the gold chain of wife of the respondent no. 2. Since the first information report was registered against the appellants, the appellants moved the learned Special Judge, Akola by way of an application under Section 438 of the Code of Criminal Procedure. The learned Special Judge, Akola by the impugned order rejected the application of the appellants seeking pre-arrest bail. The appellants have therefore filed the present appeal.

5] This Court on 04/10/2018 issued notices to the respondents and protected the appellants by directing that no coercive steps shall be taken against the appellants. The respondent no. 1 in pursuance of the notice issued by this Court has filed reply and stated that on 06/06/2017 when the respondent no. 2 asked the labourers of the appellants to stop the construction work, the appellants came to the spot and abused the respondent no. 2 in the name of caste. It is also stated that the appellants forcefully snatched the gold chain of the wife of the respondent no. 2. It is further stated that there is sufficient material available with the prosecution to implicate the appellants. Therefore, the appellants are not entitled to grant of anticipatory bail.

6] We have carefully considered the allegations in the first information report and the material produced on record by the appellants alongwith the appeal. The protection granted to the appellants by the order of this Court dated 04/10/2018 is in force till today. From the material produced on record, it appears that there are cross complaints filed by the appellants and the respondent no. 2 against each other. *Prima-facie*, it appears that the incident took place due to civil dispute between the appellants and the respondent no. 2. The allegations in the first information report in relation to the ingredients of the offences under the provisions of the Act of 1989 are vague. There is no specific role attributed to each of the appellant. It appears that the custodial interrogation of the appellants is not necessary.

7] The appellants have also filed an application seeking quashing of the first information report registered against them. This Court by way of separate order has quashed and set aside the first information report against the appellants. Therefore, the appeal of the appellants deserves to be allowed.

8] Hence, the following order:-

(a) The impugned order dated 11/09/2018 in Misc. Criminal Application No. 628/2018 passed by the Special Judge, Akola is quashed and set aside.

(b) In view of the order in Criminal Application (APL) No. 787/2018, arrest of the appellants is no longer necessary.

The appeal is **allowed** in the above terms.

(JUDGE)

(JUDGE)