

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 17 OF 2022

1. Dhirajsing Kailas Ghunavat
Age; 19 years, Occu.: Student,
2. Kailas Harishand Ghunavat
Age; 45 years, Occu.: Labour,
3. Premchand Harichand Ghunavat
Age: 46 years, Occu.: Labour,
4. Akash Tekchand Ghunawat
Age: 21 years, Occu.: Labour,
5. Tekchand Harichand Ghunawat
Age: 47 years, Occu.: Labour,
6. Vikas Kailas Ghunawat
Age: 20 years, Occu.: Student,
7. Balu Kapurchand Gunawat
Age: 21 years, Occu.: Labour,
8. Rakesh Premchand Ghunawat
(Through guardian Premchand
Harichand Ghunavat)
Age: 17 years, Occu.: Student

All R/o Shulibhanjan, Khultabad,
Dist. Aurangabad

..APPELLANTS

VERSUS

1. State of Maharashtra
2. Rahul Rambhau Ghusale
Age: 21 years, Occu.: Driver,
R/o Shulibhanjan, Khultabad,
Dist. Aurangabad

..RESPONDENTS

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Mr. N.S. Ghanekar, Advocate for appellants
Mrs. G.L. Deshpande, A.P.P. for respondent no.1 – State
Ms. Ashwini A. Lomte, Advocate appointed for respondent no.2
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CORAM : R.G. AVACHAT, J.
DATED : 27th JANUARY, 2022

PER COURT :

1. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act'). The challenge herein is to order dated 03rd January, 2022 rejecting the application of the present appellants for anticipatory bail. The appellants claim to have an apprehension of arrest in connection with Crime No. 439 of 2021 registered with Khultabad Police Station, Dist. Aurangabad for the offences punishable under Sections 307, 326, 325, 323, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code ('I.P.C.') and under Sections 3(1)(r), 3(1)(s), 3(2), 3(V) of the Act.

2. Heard. Perused the First Information Report ('F.I.R.') and the documents relied on.

3. Learned counsel for the appellants would submit that general allegations have been made against the appellants herein about having abused the informant over his caste and assaulted as well. The nature of

allegations does not attract the offence punishable under Section 307 of the I.P.C. Exaggerations have been made with a view to make the offence grievous. The F.I.R. has also been lodged against the informant herein. Appellant No.8 is seventeen years of age, as such a juvenile. Some of the appellants are in the age group of twenty one years. They are taking education. If they are arrested, it will spoil their career. Learned counsel, therefore, urged for grant of anticipatory bail.

4. Learned A.P.P. and learned counsel for Respondent No.2 – informant would, on the other hand, submit that it was an assault on the life of the informant. There is history of quarrel between the two groups. The allegations in F.I.R. undoubtedly make out the offences against the appellants herein. In view of Section 18 of the Act, there is bar for grant of anticipatory bail. Learned counsel, therefore, urged for dismissal of the appeal.

5. Considered the submissions advanced. It appears that all is not well between the appellants on one hand and the informant, his family members and friends on the other. It has been alleged in F.I.R. that on 15th December, 2021, the informant was in the company of his friend – Sajan Rajput. While both of them were near a welding shop of one Wajid, Appellant No.1 – Dhirajsing Ghunavat came running. He was armed with an axe. He assaulted the informant on his head with the axe.

Considering these allegations in the F.I.R., this Court expressed its disinclination to grant the relief to Appellant No.1. Learned counsel therefore, came around to seek withdrawal of the appeal so far as regards Appellant No.1 is concerned.

6. It has further been alleged that after Appellant No.1 assaulted the informant on his head, other twelve accused, including the appellants herein, came together. They were armed with sticks. Co-accused Kiran was armed with iron bar. All of them assaulted the informant. They abused him over his caste and gave threats of his life. Co-accused Kiran assaulted on the calf of the informant with iron bar, causing fracture.

It is to be noted here only that Kiran is not before this Court as one of the appellants herein. As such, both Appellant No.1 and co-accused Kiran, who have assaulted the informant with an axe and iron bar respectively, have been denied anticipatory bail and got arrested respectively.

7. So far as regards the other appellants are concerned, it is to be stated that they are alleged to have had abused the informant over his caste. General allegations have been levelld in this regard. It is just difficult to imagine that about eleven accused persons in one chorus abused the informant over his caste. Rest of the allegations indicate the appellants herein to have assaulted the informant with fists and kicks. It is to be stated

that assault on the head of the informant with an axe was an independent act attributed to Appellant No.1 herein. After the said assault was made, other co-accused, including the appellants herein, had come together. Same indicates the alleged unlawful assembly was formed post the assault on head was made. The appellants herein, therefore, cannot be attributed with the offence punishable under Section 307 of the I.P.C. with the aid of Section 149 of the I.P.C. As such, the allegation in F.I.R. attribute rest of the appellants herein, assault with fists and kicks. It is reiterated that the relationship between the two is not good. One F.I.R. has also been registered against the informant herein at the instance of one Rekha, wife of Appellant No.3 – Premchand. It is alleged in that F.I.R. that on the very day of the incident, the informant herein had abused and teased the tenth standard daughter of the informant. It appears that over the same some fight ensued. The F.I.R. has been lodged against the informant and his relations, ten in number.

8. Thus, the fact indicates that possibility of having given colourful version to the alleged incident cannot be ruled out. Considering the allegations in the F.I.R. and the fact that there being history of dispute between the two factions, veracity of the allegations in the F.I.R. is seriously in doubt. The Court is, therefore, inclined to allow the appeal. Hence the following order :-

ORDER

(i) Criminal appeal of Appellant No.1 is dismissed as withdrawn.

(ii) Criminal appeal of Appellant Nos. 2 to 8 is allowed. In the event of arrest of Appellant Nos. 2 to 8 in connection with Crime No. 439 of 2021 registered with Khultabad Police Station, Dist. Aurangabad for the offences punishable under Sections 307, 326, 325, 323, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code ('I.P.C.') and under Sections 3(1)(r), 3(1)(s), 3(2), 3(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they be released on bail on their executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) each with one surety in the like amount.

(iii) Appellant Nos. 2 to 8 shall appear before the investigating officer as and when required.

(iv) Fees of Ms. Ashwini A. Lomte, learned counsel appointed for Respondent No.2, is quantified at Rs.5,000/-.

(R.G. AVACHAT, J.)

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