

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

CRIMINAL APPEAL NO.107 OF 2022

1. SHUBHAM S/O SHANKAR LAVANDE AND
2. YUSUF S/O FAKIRSAB @ BALAM SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. Naseem R. Shaikh
APP for Respondent 1 : Mr. S S Dande
Advocate for Respondent 2 : Mr. Y D Kale (Appointed)

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WITH

CRIMINAL APPEAL NO. 114 OF 2022

1. LAKHAN @ ABHIJIT S/O SAHEBRAO @ ABASAHEB
MADNE AND
2. RAVINDRA @ BANTI S/O SAHEBRAO @ ABASAHEB
MADNE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr. K N Shermale
APP for Respondents: Mr. S S Dande
Advocate for Respondent 2 : Mr. Y D Kale (Appointed)

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.

Dated: March 14, 2022

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ORDER :- (Per V.K. Jadhav, J.)

1. The appellants/original accused in both these Criminal Appeals in connection with Crime no.04 of 2022 registered with Ashvi Police Station, Taluka Sangamner, District Ahmednagar for the offence

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punishable under sections 143, 147, 149, 452, 427, 364, 323, 504, 506 r/w 34 of the Indian Penal Code and under Sections 3(1)(r)(s)(t), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short hereinafter referred to as the 'SCST Act') are seeking anticipatory bail in the event of their arrest in connection with the aforesaid crime. Their application/s with similar prayer came to be rejected by the Additional Sessions Judge, Sangamner, District Ahmednagar vide common order passed below Exhibit-1 dated 31.1.2022 in Bail Application No.26 of 2022. In terms of the provisions of Section 14-A (2) of the SCST Act, the appellants/accused have preferred these criminal appeals against rejection of their application/s seeking anticipatory bail.

2. On the basis of the complaint lodged by respondent no.2-Vandana Rohidas Mali, the aforesaid crime came to be registered against the appellants. It has been alleged in the complaint that, on 13.1.2022 at about 09.30 p.m. the appellants and one unknown

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person had formed an unlawful assembly, and, in prosecution of the common unlawful object of the said assembly, abused the informant by referring her caste, entered in the house and extended the beating to the informant and also her son Sonu. It has been also alleged that the appellants and said unknown person have kidnapped the son of the informant namely Sonu.

3. Learned counsel Mr. Shaikh appearing for the appellants in criminal appeal no.107 of 2022 submits that, names of the appellants are not mentioned in the FIR, and they have been falsely implicated in connection with the present crime. Learned counsel submits that, son of the informant namely Sonu runs a country liquor bar by name 'Dosti Hostel'. Co-accused Amol @ Pramod Jagtap had lodged a complaint to Ashvi Police Station on 11.1.2022, and in view of the same police of Police Station Ashvi constrained to raid the liquor bar. Said co-accused Amol @ Pramod Jagtap is the driver of appellant no.2 working on his JCB. Learned counsel submits that the incident allegedly had taken place

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inside the house, and, thus caste abuses, if any, allegedly given in the house does not attract the penal provisions of section 3 of the SCST Act. Learned counsel submits that, respondent no.2 has not made any allegation about caste abuses in the complaint, and also she has also not made any allegation about kidnapping of her son. Learned counsel submits that, the said allegations have been intentionally levelled against the appellants/accused with some oblique motive. Learned counsel submits that, in the given set of allegations, custodial interrogation of the appellants is not required. Both the appellants are ready to co-operate the investigating agency and for that purpose they are ready to abide the conditions, if imposed by this Court.

4. Learned counsel Mr. Shermale appearing for the appellants in criminal appeal no.114 of 2022 submits that, though the incident allegedly had taken place on 13.1.2022 at about 21.00 hours, FIR came to be lodged on 14.1.2022 at about 14.23 hours. There is 16 hours of

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delay in lodging the First Information Report, which is not explained by the informant. Learned counsel submits that, co-accused Amol Jagtap came to be arrested in connection with the present crime, and he has been released by the learned Additional Sessions Judge vide its order dated 21.8.2022 in Criminal Bail Application no.27 of 2022. The learned Additional Sessions Judge, Sangamner, while releasing said co-accused Amol Jagtap on bail, in paragraph no.9 of the bail order, has observed that other offences under section 143, 147, 323, 504, and 427 are bailable offences and so far as the allegations in respect of kidnapping are concerned, during custody of the said co-accused Amol Jagtap, no useful information has been revealed. The learned Additional Sessions Judge, Sangamner has also observed that the alleged intimation and intentional insult by using the caste had happened in the four walls of the house which is definitely not within a public view and, therefore, prima facie, the ingredients of section 3(1)(r) of the SCST Act as alleged in the complaint are not attracted. Learned counsel submits that, in view of

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the same, the bar pursuant to Section 18 of the SCST Act is not attracted. Learned counsel submits that, investigation is almost completed and custodial interrogation of the appellants is not warranted. Learned counsel submits that the appellants are not hardened criminals. It is a deliberate act on the part of the informant and her family members to implicate the appellants in a more serious crime and, the same is evident from the fact that the informant in her supplementary statement has made severe allegations against the appellants.

5. Learned counsel appearing for the appellants, in order to substantiate his submissions, has placed his reliance on following judgments :-

- i. Prathvi Raj Chauhan Vs. Union of India and others reported in 2020 SCC Online SC 159.
- ii. Hitesh Verma Vs. The State of Uttarakhand and anr. in Criminal appeal No.707 of 2020.
- iii. Santosh Vinayak Nandure and ors. Vs. The State of Maharashtra and another in Criminal appeal no.353 of 2021.
- iv. Pratik Vs. State of Maharashtra reported in (2020) 3 BomCR (Cri) 238.
- v. Prabhakar Tewari Vs. State of Uttar Pradesh and another reported in (2020) 113 ACrc 326.

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6. The learned appointed counsel for respondent no.2 submits that the son of the respondent no.2/informant Sonu is not found yet. The appellants are having criminal history and they are Gunda in nature. They may tamper the prosecution evidence by pressurizing the witnesses. The accused are the persons having muscle power and, thus the complainant, who is the member of the Scheduled Tribes will be pressurized, if they are released on anticipatory bail.

7. The learned APP submits that, prima facie, there is a strong case against the appellants. Initially, the informant thought that her son Sonu has left the house and hidden himself somewhere due to apprehension of the accused persons, however, even on the next day, he has not returned to the house. Thus, the informant suspects that the appellants/accused have kidnapped her son Sonu. They are the persons having muscle power. The learned APP submits that, investigation is still going on. Son of the informant is yet not traced out. There is a strong possibility of tampering with the
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prosecution evidence, if the appellants are released on anticipatory bail. In order to find out the son of the informant Sonu, custodial interrogation of the appellants is necessary. The learned APP submits that there is a criminal history of the appellants. They may not be released on anticipatory bail.

8. We have carefully gone through the police papers, particularly, the contents of the complaint. It appears that, though respondent no.2/informant has not specifically made allegations about the caste abuses and kidnapping of her son in the complaint, however, on the same day, when her son has not returned to the house, respondent no.2/informant has disclosed all the true facts to the police about the caste abuses given to her by the appellants/accused and further the possibility of kidnapping of her son Sonu by them. Respondent no.2/informant has specifically alleged in the complaint that the appellants/accused persons have not only entered in the house of the informant but also extended the beating to her and also to her missing son Sonu. Even,

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they have broken the mobile handset of her missing son Sonu.

9. Though, the learned counsel for the appellants/accused have vehemently submitted before us that son of the informant namely Sonu had deliberately hidden himself with oblique motive and he is residing in the house of his in-laws, however, the Investigating Officer has also carried out the search of the house of the in-laws of the said Sonu and drawn the panchnama to that effect, however, whereabouts of the son of the informant namely Sonu are not known. Prosecution claims that the accused are the persons having muscle power and the complainant is the member of the Scheduled Tribes. It also appears from the allegations that the appellants/accused have abused the informant and her son Sonu by referring their caste and, thereafter, entered in her house. At this stage, it is not appropriate to infer that caste abuses have not been given within the public view.

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10. It appears from the record and the report submitted by the Investigating Officer that there are certain crimes registered against the appellant/accused Lakhan @ Abhijit Sahebrao @ Abasaheb Madne bearing crime no.107 of 2017 for the offence punishable under sections 143, 147, 149, 326, 324, 504, 506 of IPC, Crime no.22 of 2020 for the offence punishable under sections 353, 341, 332, 379 of IPC, Crime no.57 of 2021 for the offence punishable under sections 143, 147, 148, 452, 324, 323, 504 of the IPC. Further, crime is also registered against the appellant no.2 Ravindra @ Banti bearing crime nos.107 of 2017, 88 of 2018, 22 of 2020, 57 of 2021. There are various non-cognizable crimes registered against them. Though, the learned counsel for the appellants vehemently submitted that the appellants came to be acquitted in some cases, however, history of the crimes is alarming.

11. Though, the learned counsel appearing for the appellants in both these appeals have vehemently submitted that the husband of the informant is

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connected with Ashvi Police Station as informer, and, therefore, due to his influence, police persons are harassing the appellants, however, we find no substance in it. There is a strong possibility of tampering with the prosecution evidence, if the appellants are released on anticipatory bail. Investigation is still going on. Son of the informant namely Sonu is yet to be traced out. In order to find out the son of the informant Sonu, custodial interrogation of the appellants is necessary. We are not inclined to grant anticipatory bail to the appellants. Hence, following order.

ORDER

- i. Criminal Appeal no.107 of 2022 (Shubham s/o Shankar Lavande and another Vs. The State of Maharashtra and another) and Criminal appeal No.114 of 2022 (Lakhan @ Abhijit S/o Sahebrao @ Abasaheb Madne and another Vs. The State of Maharashtra and another) are hereby rejected.
- ii. Both the Criminal Appeals are accordingly disposed off.

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- iii. Since Advocate Mr. Y D Kale is appointed to represent the cause of respondent no.2 in both the criminal appeals, we quantify his legal fees and expenses @ Rs.2,000/- (Rs. Two Thousand), each in criminal appeal no.107 of 2022 and 114 of 2022 (Total Rs.4,000) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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