

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

CRIMINAL APPEAL NO. 185 OF 2022

1. Ramesh Kacharu Khune
Age: 28 years, Occu.: Agri.

2. Sainath Kacharu Khune
Age: 26 years, Occu.: Agri.,

Both R/o Bhatkudgaon,
Tq. Shevgaon, Dist. Ahmednagar

..APPELLANTS

VERSUS

1. State of Maharashtra
Through Police Inspector
Newasa Police Station,
Aurangabad

2. Deepak Prabhakar Sarode
Age: 32 years, Occu.: Agri.,
R/o Devsade, Tq. Newasa,
Dist. Ahmednagar

..RESPONDENTS

....

Mr. R.H. Wagh, Advocate for appellants
Mr. R.B. Bagul, A.P.P. for respondent no.1 – State
Mr. R.B. Narwade, Advocate for respondent no.2

....

**CORAM : R.G. AVACHAT, J.
DATED : 06th APRIL, 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 in this appeal is to an order dated 04th February, 2022 in Criminal

Bail Application No. 16 of 2022 passed by the learned Additional Sessions Judge, Newasa refusing to grant the appellants anticipatory bail in connection with Crime No. 40 of 2022 registered with Newasa Police Station, Dist. Ahmednagar for the offences punishable under Sections 143, 147, 148, 149, 324, 323, 504, 506 of the Indian Penal Code ('I.P.C.') and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Act.

2. Heard. Perused the First Information Report ('F.I.R.') and related papers.

3. It was submitted by learned counsel for the appellants that the F.I.R. was lodged five days after the alleged incident. It has been filed only as counter blast to the crime registered against the informant and others at the instance of father of the appellants herein. Learned counsel would submit that all the offences punishable under the I.P.C. are bailable one. With a view to make the offences non-bailable, recourse to the provisions of the Act appears to have been made. He, therefore, urged for grant of the appeal.

4. Learned A.P.P. and learned counsel for Respondent No.2 – complainant would, on the other hand, submit that the allegations in the F.I.R. undoubtedly make out an offence under the Act, and therefore, there is bar under Section 18 of the Act to grant pre-arrest bail. The informant was an indoor patient for over four days. Soon after his discharge, the F.I.R. was

lodged. The papers of investigation were placed on record. The averments in F.I.R. were read out to submit Appellant No.1 – Ramesh to have abused the informant over his caste. Both the learned counsel would ultimately urged for dismissal of the appeal.

5. Considered the submissions advanced. The F.I.R. has been lodged on 14th January, 2022 in relation to the incident dated 10th January, 2022. As such, there is delay of little over four days in lodging thereof. It has been alleged in the F.I.R. that the informant has an agricultural land at village Devsade. An independent transformer ('D.P.') has been installed in the field of one Balasaheb Sarode. The informant make use of the said D.P. The appellants and their father have a land at Bhatkudgaon. Kacharu (co-accused) - father of the appellants would commit theft of electricity from the said D.P. The informant would ask him not to do so. There have, therefore, been quarrels between the two. On 05th January, 2022, the informant had been to the field to find Kacharu connecting a wire to the D.P. with a view to take electricity unauthorisedly. The informant resisted him and again quarrel took place between the two.

6. It is further alleged in the F.I.R. that on 10th January, 2022 at about 11.00 a.m. the informant and his family members were in their field. The electric motor used for lifting the water all of a sudden got switched off.

The informant, therefore, went to the D.P. to find Kacharu meddling with the D.P. A quarrel, therefore, ensued between the two. Kacharu called his sons. A white pick-up van arrived there. Both the appellants got down from the vehicle with iron rod and stick. Appellant No.1 – Ramesh assaulted the informant with a iron rod and abused him over his caste. Appellant No.2 – Sainath and his father Kacharu also abused the informant and beat him up with sticks. While the informant tried to run away, co-accused – Kacharu hit the informant with a stone. On hearing the cries, mother of the informant and the labours arrived there to rescue him.

7. The appellants have their side to tell. Attention of this Court was drawn to the F.I.R. dated 10th January, 2022 lodged by father of the appellants against the informant and his family members. This was a crime registered on the same day of the alleged incident. When the mother and labours of the informant herein had witnessed the incident, one of them could have lodged the F.I.R. immediately. Even when the informant was hospitalised, he could have lodged the report there. There is about over four days delay in lodging the F.I.R. The offences punishable under the I.P.C. are all bailable one. The father of the appellants was arrested and released on bail as well. The only non-bailable offence attributed to the appellants herein is to have abused the informant over his caste. Since there is delay of little over four days in lodging the F.I.R., the said allegation is seriously in doubt.

8. In view of above, the appeal succeeds. Hence the following order :-

ORDER

(i) Criminal appeal is allowed.

(ii) In the event of arrest of the appellants in connection with Crime No. 40 of 2022 registered with Newasa Police Station, Dist. Ahmednagar for the offences punishable under Sections 143, 147, 148, 149, 324, 323, 504, 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they be released on executing P.R. bonds in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

(iii) The appellants shall not tamper with the prosecution evidence.

(iv) The appellants shall appear before the investigating officer as and when required.

(R.G. AVACHAT, J.)

SSD