

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

925 CRIMINAL APPEAL NO. 227 OF 2022

- 1] Ayyub Kasam Shaikh.
2] Bhagwan S/o Vishwanath Tikhe. ... **Appellants**

Versus

- 1] The State of Maharashtra.
2] Uttam S/o Ambadas Barse. ... **Respondents**

...

Mr. Vishal A. Bagal, Advocate for Appellants.
Mr. G. O. Wattamwar, APP for Respondent/State.
Mr. Aminullah Ahmed Khan, Advocate for Respondent No.2.

...

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 21st September, 2022.

PER COURT.:

. The appellants have challenged the order of rejection of anticipatory bail passed by the learned Additional Sessions Judge-1, Vaijapur dated 15th March, 2022 in Criminal Bail Application No.84 of 2022 by way of this appeal.

2 Heard Mr. V. A. Bagal, learned counsel for the appellants, Mr. Wattamwar, learned APP for respondent/State and Mr. Khan, learned counsel for respondent No.2/first informant.

3 Mr. Bagal, learned counsel for the appellants invited my attention to the copy of FIR. He submitted that there are two groups in the village. One group is of Deputy Sarpanch and another group is headed by the Sarpanch. Due to political fraction, both the parties have filed counter cases against each other. He submitted that in all three complaints have been filed against the first informant / Gramsevak by these appellants and others raising various issues before filing of FIR and this complaint is the foundation, which prompted the first informant to lodge the FIR. The present appellants had filed complaint against the first informant / Gramsevak of village Shingi and raised various grievances against him. The first informant had grudge in his mind against the appellants and others. He has lodged false FIR against the appellants and others out of grudge. He submitted that as per his instructions, the investigation of the case is completed. There is no need to keep the appellants behind the bars when investigation is over. According to him, charge-sheet is filed before the Special Court on 19th April, 2022. He, therefore, urged to grant anticipatory bail to the appellants.

4 Mr. Wattamwar, learned APP for the respondent / State strongly opposed to grant anticipatory bail to the appellants. He invited my attention to the copy of FIR and pointed out that specific role is attributed against the appellants. He read the relevant paragraph of

the FIR and pointed out that both the appellants alleged to have used abusive language with reference to the caste of the first informant. As such, *prima-facie*, the offences under the Atrocities Act attract. In view of the bar provided under the Atrocities Act, the appellants are not entitled to get anticipatory bail. He further invited my attention to the police papers and report submitted by the investigation officer. He submitted that there are statements of five eye-witnesses, who had witnessed the alleged incident. They have supported to the prosecution case by stating that both the appellants had used abusive language against the first informant with reference to his caste when he was discharging his official duty as Gramsevak. Having regard to the role attributed against the appellants and use of abusive language with reference to the caste of the first informant, they are not entitled to get any protection.

5 Mr. Khan, learned counsel for respondent No.2 argued on similar lines. He submitted that the appellants have not only abused the first informant with reference to his caste, but threatened him with dire consequences after assaulting him mercilessly. He invited my attention to the copy of FIR and pointed out about specific role of these two appellants in the commission of alleged offences. He, therefore, strongly opposed to allow this appeal and release the appellants on anticipatory bail.

6 I have considered the submissions of both the sides and the learned APP for the State. Perused the copy of FIR, which is registered as Crime No.52 of 2022 with Gangapur Police Station, District Aurangabad, for the offences punishable under Sections 143, 147, 149, 353, 323, 504 and 506 of the Indian Penal Code and Sections 3(1)(r) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the appellants and others. As well as the FIR lodged by Rambhabai Ratan Kakde vide Crime No.53 of 2022, registered at Gangapur Police Station, District Aurangabad, for the offences punishable under Sections 354, 354-A, 323 and 504 read with 34 of the Indian Penal Code and Sections 3(1)(w)(i) and 3(1)(w)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Perused the report submitted by the investigation officer / SDPO, Gangapur in connection with Crime No.52 of 2022 and Crime No.53 of 2022, registered at Gangapur Police Station against the respective parties.

7 There may be political rivalry between the parties at village level, which generally seen. The first informant Uttam Ambadas Barse is serving as Gramsevak of village Shingi, Taluka Gangapur. On 19th February, 2022, in the morning after completing the programme of celebration of *Shivaji Maharaj Jyanti*, he was busy in the work when

the appellants and their associates alleged to have reached to the first informant and picked up quarrel in his office. They have beaten to the first informant by fist blows and kicks. The present appellants alleged to have abused to the first informant with reference to his caste. The incident had taken place in a broad daylight at village Shingi and number of persons had witnessed the incident. On careful examination of the FIR, it would reveal that the appellants alongwith their associates entered in the Grampanchayat office and one Sukhdeo Shankar Gaware (co-accused) caught hold the collar of the first informant and one Musa Hasan Shaikh (another co-accused) gave kick in his stomach and others assaulted to the first informant by means of fist blows and kicks. In the same course of transaction, the present appellants alleged to have abused to the first informant with reference to his caste and subsequently, the persons, who were present in the Grampanchayat namely Narayan Kachru Karbhar, Ganesh Narayan Karbhar, Changdeo Eknath Jadhav (Peon) and Naeem Fatru Patel intervened in the quarrel.

8 The FIR seems to have been filed on the very day soon after the incident on 19th February, 2022. *Prima-facie* the provisions of the Atrocities Act attract against the present appellants since there are specific allegations against them for hurling abuses with reference to the caste of the first informant. So far as counter case and FIR is

concerned, it seems that after lodging of FIR by the first informant in order to give counterblast to the earlier FIR lodged by the first informant, the opposite side of the appellants seems to have put the criminal law in motion. Be that as it may, having regard to the allegations levelled against the appellants with their specific role, *prima-facie* Section 3(1)(r) of the Atrocities Act do attract. Reliance can be placed in case of of ***Vilas Pandurang Pawar and another Vs. State of Maharashtra and others, 2012(4) Mh.L.J. (Cri.) (S.C.) 707***, wherein the Honourable Supreme Court in paragraph Nos.9 and 10 has made following important observations:

“9. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the Court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ ST Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out. Moreover, while considering the application for bail, scope for

appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

9 In view of bar provided under Section 18 of the Atrocities Act, the appellants are not entitled to get anticipatory bail. The appeal is liable to be dismissed.

10 Hence, the criminal appeal stands dismissed.

11 At this stage, Mr. Bagal, learned counsel for the appellants submits that the appellants intend to challenge the order passed by this Court before the Honourable Supreme Court and seeks stay to the operation of this order.

12 Heard Mr. Wattamwar, learned APP for the respondent / State and Mr. Khan, learned counsel for respondent No.2, who opposed to grant stay.

13 This Court has granted interim protection to the appellants

and the same is continued from time to time till this date. As such, it needs to be continued for a period of four weeks since the appellants intend to challenge the order passed by this Court before the Honourable Supreme Court.

14 In the interest of justice, this order is stayed for a period of four weeks from today.

[SHRIKANT D. KULKARNI, J.]

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