

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

926 CRIMINAL APPEAL NO.304 OF 2022

DINESH SUKUMAR PAWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. Thombre S.S.
APP for Respondent : Mr. G O Wattamwar
Advocate for Respondent 2 : Mr. Bhosale M K
(appointed)

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WITH

CRIMINAL APPEAL NO.294 OF 2022

SATISH SUNDAR PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER.

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Mr. P B Rakhunde advocate for the appellant.
APP for Respondent 1 : Mr. G O Wattamwar
Advocate for Respondent 2 : Mr. Bhosale M K
(appointed)

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CORAM : SHRIKANT D. KULKARNI, J.
Dated : August 02, 2022

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PER COURT :-

1. The appellants in respective appeals have challenged the common order of rejection of anticipatory bail passed by the Special Judge-1, Osmanabad in Criminal Bail Application No.97 of 2022.

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2. Crime No.52 of 2022 came to be registered with Shiradhon Police Station, District Osmanabad against the appellants for the offences punishable under sections 143, 147, 148, 149, 327, 324, 323, 504, 506 of the IPC and u/s 3 (1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. After rejection of anticipatory bail application at the hands of the Special Judge-1, Osmanabad, the appellants have rushed to this Court and this Court was pleased to grant interim protection to the respective appellants by order dated 29.4.2022 and 13.4.2022 on certain conditions. It is to be seen whether interim protection granted by this Court vide respective orders referred above is to be made absolute or liable to be vacated.

4. Heard Mr. Thombre, learned counsel for the appellants in appeal no.304 of 2022 and Mr Rakhunde, learned counsel for the appellants in criminal appeal no.294 of 2022, Mr. Bhosle, learned counsel appointed

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for the first informant in both the appeals and Mr. Wattamwar, learned APP for the State/respondent no.1.

5. Learned counsels for the appellants vehemently submitted that the respondent no.2/first informant was caught red hand by the villagers while committing theft of one electric motor belonging to Satish Pawar (appellant in appeal no.294 of 2022). That matter was settled at village level, however, subsequently, respondent no.2 rushed to Police Station Shiradhon and lodged the FIR against the respective appellants in respect of alleged two incidents, dated 14.2.2022 and another dated 18.2.2022. They submitted that so far as first alleged incident dated 14.2.2022 is concerned, allegations regarding abuses with reference to caste have been made against Bapu Dashrath Pawar, who is not made accused. Second incident alleged to have taken place on 18.2.2022 in the evening time. It is submitted that, such incident had never occurred. Respondent no.2/first informant is a labour. The appellants are the agriculturists and it is difficult to accept that they had

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snatched Rs.520/- from the pocket of the first informant by showing the weapon axe and knife. On the contrary, the FIR lodged by the first informant is nothing but a counter blow to the FIR lodged by Satish Pawar/appellant in criminal appeal no.294 of 2022. They submitted that from the date of interim protection, the appellants have extended co-operation to the investigating officer. There are no extra ordinary circumstances to vacate the interim protection. They are ready to co-operate with the investigating officer. They further submitted that section 327 alleged against the appellants prima facie do not attract when no injuries were found on the person of the first informant. They submitted that false complaint has been lodged against the appellants only with a view to give counter blow to the FIR filed by Satish Pawar/Appellant.

6. Mr. Bhosle, learned counsel for the first informant and Mr. Wattamwar, learned APP for the State strongly opposed to confirm the interim protection. They submitted that the provisions of the Scheduled Castes

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and Scheduled Tribes (Prevention of Atrocities) Act, 1989 prima facie attract in view of the nature of allegations levelled against the appellants in the FIR. They submitted that section 327 of the IPC alleged against the appellants provides punishment up to 10 years, which is a serious offence. The appellants alleged to have used weapons like axe and knife in the commission of the offences. It is necessary to recover the weapon from the appellants. Their custodial interrogation is necessary. They submitted that investigation of the case is still at the initial stage. As such, interim protection is liable to be vacated by dismissing both these appeals.

7. I have considered the submissions of both sides. I have also gone through the copies of the FIR. It is pertinent to note that Crime no.52 of 2022 came to be registered at the instance of the first informant Nitin Zombade on 22.2.2022 for the offences punishable under sections 143, 147, 148, 149, 327, 324, 323, 504, 506 of the IPC and u/s 3 (1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

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Act, 1989. Whereas crime no.51 of 2022 came to be registered at Shiradhon police station for the offence punishable under sections 379, 511 of the IPC against the first informant Nitin Zombade on 22.2.2022. It is, therefore, clear that both the FIR's came to be registered at the same police station and on same day though time may be different. One FIR is against the first informant, whereas the first informant has lodged the FIR against the appellants.

8. Let me first deal with the FIR lodged by the first informant Nitin Zombade. The FIR is in two parts. One part relates to the alleged incident dated 14.2.2022. It appears that Nitin Zombade and his father were returning to their home when Bapu Pawar met them on the way and alleged to have given abuses with reference to their caste. Second incident alleged to have taken place on 18.2.2022 at about 5.30 p.m. It is alleged that Dinesh Pawar alleged to have picked up Nitin Zombade and put him on the motor cycle and taken him to the filed of Bapu Pawar (Bhatiwale). It is alleged that

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Dashrath Pawar, Bali Pawar, Nandkumar Pawar and Satish Pawar (appellants) alleged to have assaulted to Nitin Zombade by sugarcane and Murum Stones and abused him and also forcibly taken away cash amount of Rs.520/- from his pocket by showing an axe and knife. They alleged to have threatened to Nitin Zombade; forcibly given electric motor in his hand and taken his photograph alongwith the said motor and threatened that if he went to police for lodging the complaint; then they will use said photograph for lodging a case of theft on him and further threatened with dire consequences.

9. It is material to note that the first alleged incident had taken place on 14.2.2022 and second alleged incident had taken place on 18.2.2022 and the FIR came to be lodged about so called two incidents referred above on 22.2.2022 after causing considerable delay. No explanation is given in the FIR about such inordinate delay in lodging the FIR by Nitin Zombade.

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10. Another FIR which is lodged on the same day at the instance of Satish Pawar. It appears that allegations are made against Nitin Zombade for attempting to commit theft of electric motor and allegedly caught hold him red handed. As stated above, both the FIRs came to be registered on the same and very day. Crucial point is whether custodial interrogation of the appellants is necessary for further investigation. So far as use of the weapons at the instance of the appellants is concerned, they alleged to have shown axe & knife while forcibly snatching cash amount of Rs.520/- from the pocket of Nitin Zombade. On perusing the investigation papers, it is revealed that two eye witnesses seem to have not supported to the story narrated by the first informant. Injury certificates prima facie does not reveal any injury. Even CT Scan report do not reveal any injury.

11. Under these circumstances, having regard to the nature of allegations and in view of filing of cross-complaints against each other, I am of the considered view that there is no need to have custodial

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interrogation with the respective appellants. The appellants are on interim protection. No report from the Investigating Agency that they have misused the interim protection. Remaining part of investigation can be completed by securing presence of the appellants and by putting certain conditions. There are no extra ordinary circumstances to vacate the interim protection granted by this Court.

12. Having regard to the above discussion, both the appeals need to be allowed. Hence, the following order.

O R D E R

- i. Both the appeals preferred by respective appellants are hereby allowed.
- ii. The impugned order passed by the learned Special Judge-1 in Criminal Bail Application No.97 of 2022 dated 15.03.2022 is hereby quashed and set aside.
- iii. Interim protection granted by this Court vide order dated 29.4.2022 and 13.4.2022 is hereby confirmed on following conditions :-

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- a] They shall report their attendance once in a week i.e. on every **Tuesday** between 10.00 am to 11.00 am at Shiradhon Police Station, District Osmanabad till filing of the charge-sheet.
- b] They shall remain present as and when called by the Investigating Officer and to co-operate the Investigating Agency.
- c] They shall not tamper with the prosecution evidence and witnesses in any manner.
- d] Inform to concerned police station and concerned Court accordingly.
- iv. Both the appeals are accordingly disposed off.
- v. Fees of the appointed counsel Mr. Mahesh Bhosale for respondent no.2, are quantified at Rs.5,000/-. The Secretary, High Court Legal Services, Sub-Committee, Aurangabad is requested to pay the above said fees to Mr. Mahesh

Bhosale, learned counsel appointed by this Court as per procedure.

(SHRIKANT D. KULKARNI, J.)

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