

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CRIMINAL APPEAL NO.293 OF 2022

1. Datta s/o. Kashinath Shinde,
 2. Kashinath s/o. Narayan Shinde
 3. Tukaram Rajaram Shinde ... Appellants
- Versus
1. The State of Maharashtra
 2. Ashok s/o. Dnyanoba Hatekar ... Respondents

...
Advocate for Appellants : Mr. Bharat N. Gadegaonkar
APP for Respondent No.1 : Mr. G. O. Wattamwar
Advocate for Respondent No.2 : Ms Harsha Raosaheb Lomate
(Appointed)
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CORAM : SHRIKANT D. KULKARNI , J.

DATE : 29th JULY, 2022

PER COURT :

1. This appeal is directed against the rejection of anticipatory bail moved by the present appellants before the learned Additional Sessions Judge, Bhokar, District Nanded.
2. Heard Mr.Bharat N. Gadegaonkar, learned counsel for the appellants, Mr. G. O. Wattamwar, learned APP for the respondent No.1/State and Ms Harsha Raosaheb Lomate, learned counsel appointed for respondent No.2.
3. Mr. Gadegaonkar, learned counsel for the appellants invited my attention to the copy of FIR (page Nos. 15-A to 15-H). He pointed out that

the alleged incident of setting on fire harvested crop of green gram stored in the field of first informant/respondent No.2 Ashok Dnyanoba Hatekar had taken place from 20.00 hours of 16.03.2022 to 06.00 a.m. of 17.03.2022, when the first informant had slept in his house. He submitted that the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the said Act"), applied against the present appellants do not attract. He, therefore, urged to grant anticipatory bail by allowing this appeal.

4. Mr. Wattamwar, learned APP for the respondent No.1 / State opposed to grant anticipatory bail to the appellants.

5. Ms Harsha Lomate, learned counsel appointed for respondent No.2 submitted that the names of the appellants have been specifically mentioned in the FIR with their role. Respondent No.2 belongs to scheduled caste. Section 3(1)(r)(s) of the said Act is rightly applied against them. The appellants are not entitled to get anticipatory bail in view of bar provided in the said Act.

6. Having regard to the submissions of both the sides, I have gone through the copy of the FIR and investigation papers made available by Mr. Wattamwar, learned APP for respondent No.1/State.

7. On careful study of the FIR, it would reveal that it is mere suspicion of the first informant/respondent No.2 that it must be the act of present appellants in setting on fire the stock of harvested crop of green

gram in his field during the night hours from 16.03.2022 to 17.03.2022. The statements of witnesses recorded by the Investigating Officer are in the nature of hearsay. Those are not anyway *prima facie* supporting to the case projected by the first informant/respondent No.2 in the FIR. Even though, the police have applied Section 3(1)(r)(s) of the said Act, *prima facie* that provisions do not attract having regard to the allegations made in the FIR.

8. Having regard to the above factual scenario and in view of the statements of the witnesses recorded by the Investigating Officer, it is a fit case to grant anticipatory bail to the appellants by allowing this appeal. The view taken by the learned Additional Sessions Judge while rejecting the prayer for anticipatory bail moved by the appellants appears to be erroneous. Hence, the following order -

ORDER

- (i) The appeal is hereby allowed.
- (ii) The impugned order passed by the learned Additional Sessions Judge, Bhokar, District Nanded, dated 5th April 2022 is hereby quashed and set-aside.
- (iii) In the event of arrest of appellants No. (1) Datta s/o. Kashinath Shinde, (2) Kashinath s/o. Narayan Shinde and Tukaram S/o Rajaram Shinde, in connection with Crime No. 0046 of 2022 registered with Police Station, Himayatnagar, District Nanded for the offence punishable under Section 435, 506, 427 read with Section 34 of the Indian Penal Code and Sections 3(1)(r)(s) of the Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989, they shall be released on bail on their furnishing PR bond Rs.15,000/- (Rs. Fifteen Thousand Only) each with one or two solvent sureties of like amount by each of them on following conditions -

- (a) The appellants shall remain present as and when called by the Investigating Officer and co-operate with the Investigating Agency.
- (b) The appellants shall not tamper with the prosecution witnesses and evidence in any manner.
- (iv) Inform to the concerned Police Station and the Court accordingly.
- (v) Ms Harsha Raosaheb Lomate, learned counsel is appointed by this Court vide order dated 22nd July 2022 to represent respondent No.2. As such, the Secretary, High Court, Legal Services Sub Committee, Aurangabad is directed to pay her professional fees quantified at Rs.3000/- (Rs.Three Thousand Only) as per procedure.

[SHRIKANT D. KULKARNI, J.]