

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

CRIMINAL APPEAL NO.352 OF 2022

1. Bhagwan Kashiram Kolhe
2. Narayan Kashiram Kolhe ... Appellants

Versus

1. The State of Maharashtra
2. Santeetabai Kailas Sonawane ... Respondents

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Mr. Balraj P. Pande, Advocate for the Appellants
Mr. R.D. Sanap, APP for Respondent No.1/State
Mr. Pratik A. Bhosale, Advocate (appointed) for Respondent
No.2

....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 07 SEPTEMBER 2022

PER COURT:-

1. Feeling aggrieved by the order of rejection of the anticipatory bail dated 28.04.2022, these appellants have preferred this appeal and prayed for same relief of pre-arrest bail.

2. Heard Mr. Balraj Pande, learned counsel for the appellants, Mr. Sanap, learned APP for respondent No.1/State and Mr. Pratik Bhosale, learned counsel (appointed) for respondent No.2.

3. This court vide order dated 04.05.2022 was pleased to grant interim protection on certain conditions observing that a ground for grant of *ad interim* relief is made out.

4. Mr. Pande, learned counsel for the appellants invited my attention to the copy of the F.I.R. He submitted that there are two political parties in the village Karanjkheda Tq. Kannad, District Aurangabad. The present appellants belong to *Bhartiya Janata Party* and the first informant/respondent No.2 belongs to *Rashtravadi Congress Party*. She has been elected as a Sarpanch of the village from the reserved category though her panel was in minority. He submitted that the F.I.R. in question came to be registered out of political rivalry between two groups.

5. He took me through the relevant part of the F.I.R. dated 24.04.2022. He submitted that Crime No. 109 of 2022 came to be registered against in all six accused persons. Out of them, four have been released on pre-arrest bail by the Special Judge (POA Act), Aurnagabad. The present appellants are only left out. He submitted that even if the allegations made in the F.I.R. are taken at its face value, the allegations regarding abuses with reference to her caste

attributed to Sachin Madhavrao Kolhe, who has been arrested and released on bail. He, therefore, submitted that *prima facie* provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not attract. He submitted that there is no need of custodial interrogation of the appellants having regard to the nature of allegations.

6. He further invited my attention to the copy of the order passed by the learned Special Judge (POA Act), Aurangabad in bail application No. 770 of 2022. He submitted that the learned Special Judge (POA Act) was influenced by the so called criminal record of these two appellants and observed about criminal antecedents while rejecting the bail application on that ground as well as other grounds. He invited my attention to the chart, which is made available on record and pointed out that in all two criminal cases were registered against appellant No.1 Bhgwan. Out of them, appellant No.1 came to be acquitted in S.C.C. No.491 of 2012 (State of Maharashtra Vs. Bhagwan Kashiram Kolhe). He submitted that another case vide S.C.C. No. 10770 of 2021 against the appellant No.1 and others is still sub judice, wherein appellant No.1 is original accused No.19. He

submitted that there is only one case pending against appellant No.1 as per the court record. There are no criminal antecedents against appellant No.1.

7. He further invited my attention to the information related to the appellant No.2. He submitted that in all eight criminal cases were registered against appellant No.2. Appellant No.2 came to be acquitted out of those eight criminal cases since proceedings came to be stopped under Section 258 of the Code of Criminal Procedure. So far as another matter is concerned, it is a Regular Darkhast out of civil proceedings. He, therefore, submitted that the observations made by the learned Special Judge (POA Act) are incorrect.

8. While concluding the argument, Mr. Pande, learned counsel submitted that there is no material to keep the appellants behind the bars, and urged to grant them anticipatory bail.

9. Mr. Bhosale, learned counsel for respondent No.2 and Mr. Sanap, learned APP for respondent No.1/State submitted that offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, *prima facie*

attract in view of allegations levelled against the appellants in the F.I.R. As such, bar under Section 18 of the Atrocities Act comes into picture. Therefore, the appellants are not entitled to get any protection in view of Section 18 of the Atrocities Act. Both of them supported the impugned order passed by the learned Special Judge (POA Act), Aurangabad dated 28.04.2022.

10 At the outset, it is necessary to place on record that interim protection granted to the appellants vide order dated 04.05.2022 is continued from time to time till date. There is no report from the Investigating Officer that the appellants are not cooperating in the investigation. There are no allegations that the appellants are making any attempt to influence the prosecution witnesses. In absence of such report from the investigating agency, it can be safely inferred that the appellants are extending cooperation to the investigating agency.

11. The question comes whether the appellants are entitled to get anticipatory bail by confirming interim protection granted by this Court.

12. The F.I.R. is the foundation, wherein certain allegations are made. On microscopic examination of the F.I.R. (page 18), it would reveal that the incident dated 24.04.2022, is divided in two parts. In the second part, present appellants along with their associates alleged to have rushed to the first informant and threatened her with dire consequences. They alleged to have abused the first informant. In this context, on careful scrutiny of the F.I.R., it would reveal that Mr. Sachin Madhavrao Kolhe alleged to have abused to the first informant with reference to her caste. No role is attributed to the present appellants regarding abuses with reference to caste of the first informant. As pointed out earlier, Sachin Madhavrao Kolhe came to be arrested and he has been released on regular bail. In absence of of any role of appellant Nos. 1 and 2 in giving abuses to the first informant with reference to her caste, *prima facie*, provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not attract. As such, their case need to be considered for granting anticipatory bail.

13. So far as the criminal antecedents referred by the learned Special Judge in the impugned order are concerned,

it is pointed out by Mr. Pande that in almost all cases, appellant No.2 came to be acquitted and only one civil case is pending against him. So far as appellant No.1 is concerned, there were two cases. Out of them, in one case appellant No.1 is acquitted and another case is pending. In this background, it is difficult to accept that both the appellants have criminal background.

14. Having regard to the nature of allegations levelled against the appellants and their role, there is no need to keep them behind the bars. It is pointed out by Mr. Sanap, learned APP for respondent No.1/State that after granting interim protection, the investigation is completed and the charge-sheet has been filed before the concerned court.

15. Having regard to the above factual scenario and filing of the charge-sheet, it would be just and proper to allow this appeal by confirming the interim protection earlier granted by this court.

ORDER

- (i) The appeal stands allowed.
- (ii) The impugned order passed by the learned Special Judge (POA Act), Aurangabad in criminal bail application No.

770 of 2022 dated 28.04.2022, is hereby quashed and set aside.

(iii) In the event of arrest of the appellants/accused **Bhagwan Kashiram Kolhe** and **Narayan Kashiram Kolhe** in connection with crime No. 109 of 2022 registered at Pishor Police Station, Tq. Kannad, District Aurangabad for the offences punishable under Sections 143, 149, 504, 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, they shall be released on bail on their furnishing P.R. bond of Rs.20,000/- (Rupees Twenty Thousand only) each, with one or two solvent sureties of the like amount by each of them on the following conditions:-

- (a) They shall furnish their in detail address with Cell Numbers with the trial court court as well as the concerned investigating officer.
- (b) They shall not tamper with the prosecution witnesses and evidence in any manner and remain present before the concerned court as and when case is fixed.

(iii) Inform the concerned court and police station accordingly.

(iv) The professional fees of Mr. Pratik Bhosale, learned counsel (appointed) for respondent No.2 is quantified at Rs.5,000/-. The Secretary, High Court Legal Services Sub Committee, Aurangabad is requested to make the payment of above said professional fees to Mr. Pratik Bhosale, learned counsel (appointed).

(v) The criminal appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane