

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

³
CRIMINAL APPEAL NO.425 OF 2022

1. Pandurang Murlidhar Devre
2. Govind Dagadu Sawant
3. Vikas Bhalchandra Thorat
4. Anand Sunil Jagtap
5. Vishnu Madhukar Gardulkar ... Appellants

Versus

1. The State of Maharashtra
2. Abhimanyu Popat Salve ... Respondents

WITH

CRIMINAL APPEAL NO.426 OF 2022

Sanjay Bhaguji Shelke ... Appellant

Versus

1. The State of Maharashtra
2. Abhimanyu Popat Salve ... Respondents

....

Mr. Abhijit S. More, Advocate for the Appellants
Mr. P.G. Borade, APP for the Respondent No.1/State
Mr. Shriraj Ramesh Wakale, Advocate for Respondent No.2

....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 17 AUGUST, 2022

PER COURT:-

. Both these appeals are directed against the common impugned order passed by the Additional Sessions Judge, Shrigonda in criminal (bail) M.A. Nos.271 of 2022 and 269 of 2022 dated 27.05.2022.

2. The prayer for anticipatory bail moved by the respective appellants by way of different applications for anticipatory bail came to be registered at the hands of the Additional Sessions Judge, Shrigonda. Feeling aggrieved thereby, respective appellants have preferred their respective statutory appeals and challenged the common impugned order passed by the Additional Sessions Judge, Shrigonda.

3. Heard Mr. Abhijit More, learned counsel for the appellants, Mr. Borade, learned APP for respondent No.1/State and Mr. Shriraj Wakade, learned counsel for respondent No.2 in both the appeals.

4. Mr. Abhijit More, learned counsel for the appellants vehemently submitted that respondent No.2 and his accomplice were caught red-handed by the present appellants while committing theft of iron plates etc. in the midnight of 15.04.2022. Respondent No.2 and his accomplice were taken to police station Belwandi and handed over to the police. On that basis, crime No. 264 of 2021 came to be registered at Belwandi Police Station for the offence

punishable under Section 379 read with Section 34 of the Indian Penal Code. He submitted that respondent No.2 and his accomplice never complained about such incident of assault and abuses with reference to their caste, when they were arrested by the police in connection with Crime No. 264 of 2022. Respondent No.2 Abhimanyu Salve lodged the F.I.R. on 17.04.2022 after causing two days' delay alleging that the appellants and their associates by forming unlawful assembly with arms and assaulted them and caused injuries and abused them with reference to their caste. It is after thought story only with a view to give a counter blast to the F.I.R. lodged by the appellant Sanjay Bhaguji Shelke, who is the project manager working with Shankar Ramchandra Earth Movers Company Ltd. He submitted that this Court was pleased to grant interim protection with certain conditions. The appellants have co-operated to the investigation agency. They are ready to co-operate to investigation agency to complete the remaining part of the investigation, if any. There are no criminal antecedents against them. They may be protected by confirming the interim protection and by allowing the respective appeals.

5. Mr. Borade, learned APP for respondent No.1/State strongly opposed to allow both the appeals. He submitted that in the said incident the first informant and his accomplice were brutally beaten and they have sustained grievous injuries. The investigation is at initial stage. The test identification parade is yet to be conducted. As such, the presence of the appellants is necessary for custodial interrogation.

6. Mr. Shriraj Wakale, learned counsel for respondent No.2 also argued on the same line. He also took me through the relevant part of the F.I.R. vide Crime No.133 of 2022. He submitted that the appellants had used specific abusive language with reference to the caste of the first informant. The first informant and his accomplice were going to Daund by their vehicle to attend Dr. Babasaheb Ambedkar Jayanti, and on the way, they were intercepted by the present appellants and their associates, and brutally assaulted by means of iron rods and caused serious injuries. He submitted that the provisions of Atrocities Act *prima facie* attract in view of nature of abuses with reference to the caste of the first informant as specifically described in the F.I.R. He

submitted that custodial interrogation of the appellants is necessary to recover weapons used in the commission of offence. It is necessary to have an identification parade. He, therefore, urged to dismiss both the appeals.

7. I have considered the submissions of both the sides. Perused the copy of of F.I.R. lodged by one of the appellants namely Sanjay Bhaguji Shelke, who is a project manager, vide Crime No. 264 of 2022 at Shrigonda Police Station for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code. It is alleged in the F.I.R. that in the midnight of 15.04.2022, the present respondent No.2 and his accomplice were caught red-handed while committing the theft of steel plates, etc. They were taken to the police station and handed over to the police along with their vehicle. They were committing theft of building material. That incident had taken place on 15.04.2022 in the wee hours at about 1.30 hours and the F.I.R. came to be registered on the very day on 15.04.2022 at about 14.50 hours. On the basis of that F.I.R., respondent No.2 and his accomplice came to be arrested, and subsequently, released on bail. It further appears that respondent No.2 also lodged F.I.R. on 17.04.2022 about the incident dated 14.04.2022 at about

12.15 hours stating about the forming of unlawful assembly armed with weapons and assaulted to respondent No.2 and his accomplice and abused with reference to their caste. Therefore, it is clear that there are two F.I.Rs. about the same incident. The F.I.R. vide Crime No.234 of 2022 is found to be first in time lodged by Mr. Sanjay Bhaguji Shelke. Whereas, the F.I.R. vide Crime No.133 of 2022 lodged by respondent No.2/Abhimanyu Salve on 17.04.2022 is found to be later in time. This court has granted interim protection to the appellants vide order dated 14.06.2022. The investigation is stated to be in progress.

8. The question is whether the provisions of the Atrocities Act *prima facie* attract. It is material to note that both the parties are not known to each other. They are not knowing about their respective castes when the incident had taken place in the midnight on 15.04.2022. As such, the intention to abuse to respondent No.2 and his accomplice with reference to caste is certainly missing in the F.I.R. lodged by respondent No.2. The incident had taken place in the midnight of 15.04.2022, between the first informant and his accomplice from one side and the appellants were on the other side. Apparently, there was no gathering of other

persons at such place in the midnight. Under these circumstances, it is *prima facie* difficult to attract the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

9. So far as question of remaining part of the investigation is concerned, that can be taken care of. Even the test identification parade can be conducted by securing the presence of the appellants, equally recovery of the weapons. It is informed that Section 326 of the Indian Penal Code subsequently added after eight days. However, there are no extraordinary circumstances to refuse the prayer for anticipatory bail. It is also pointed out by Mr. More, learned counsel for the appellant that one of the appellant Anand Sunil Jagtap is also the member of Scheduled Caste. Even then, the investigating officer has registered the crime against him under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In this background and looking to the facts and circumstance of the case, it would be just and proper to allow both the appeals. The remaining part of the investigation can be taken care of by imposing certain conditions till completion of the investigation.

ORDER

- (i) Both the appeals stand allowed.
- (ii) The common impugned order dated 27.05.2022 passed in criminal (bail) application Nos.271 of 2022 and 269 of 2022 in connection with Crime No.133 of 2022 registered at Belwandi Police Station 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) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby quashed and set aside.
- (iii) The interim protection granted by this Court in both the appeals vide order dated 14.06.2022 is hereby confirmed on following conditions:-
 - (a) The appellants in both the appeals shall report their attendance once in a week at Belwandi Police Station i.e. on Tuesday between 10.00 a.m. to 11.00 a.m. till completion of the investigation.
 - (b) The appellants in both the appeals shall remain present as and when called by the Investigating Officer and co-operate with the Investigating Agency.

- (c) The appellants in both the appeals shall not tamper with the prosecution witnesses and evidence in any manner.
 - (d) The appellants in both the appeals shall furnish their in detail address and cell numbers with the Investigating Officer.
- (iv) Both the Criminal appeals are accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane