

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

CRIMINAL APPEAL NO.545 OF 2022

1. Siddheshwar Bhanudas Tidke
2. Machindra Vitthal Tidke
3. Bhanudas Vitthal Tidke
4. Rajnikant Macchindra Tidke ... Appellants

Versus

1. The State of Maharashtra
2. Balasaheb Rohidas Ujgare ... Respondents

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Mr. S.S. Kulkarni, Advocate h/f Mr. V.S. Kadam, Advocate for
the Appellants

Mr. G.O. Wattamwar, APP for Respondent No.1/State
Mr. S.B. Solanke, Advocate for Respondent No.2

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 5 AUGUST, 2022

PER COURT:-

1. Mr. S.S. Kulkarni holding for Mr.V.S. Kadam, learned counsel for the appellant submits that he has already made corrections in the prayers and accordingly removed the office objections. His statement is taken on record.

2. Mr. S.B. Solanke, learned counsel for respondent No.2 seeks leave to place on record the affidavit-in-reply of respondent No.2.

3. Leave granted. The copy of affidavit-in-reply is taken on record.

4. The appellants are challenging the impugned order of rejection of anticipatory bail passed by the Additional Sessions Judge, Majalgaon in criminal bail application No. 188 of 2022.

5. Heard Mr. Kulkarni holding for Mr. V.S. Kadam, learned counsel for the appellants, Mr. Wattamwar, learned APP for respondent No.1/State and Mr. Solanke, learned counsel for respondent No.2.

6. Mr. Kulkarni, learned counsel for the appellants invited my attention to the copy of F.I.R. (page 18-A to 18-H). He submitted that the offence alleged against the appellants are bailable except offence under Section 452 of the Indian Penal Code. He submitted that Sections 3(1)(r), 3(1)(s), 3(2)(va) and 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not attract against the present appellants since the abuses with reference to caste are not attributed to them. It is one Kundlik Tidke who alleged to have abused with reference to caste, who is not made the appellant before this court. He

submitted that co-acused Aajay Bhanudas Tidke, Arjun Kundlik Tidke, Pradeep @ Pratik Chandrashen Tidke and Chandrasen Vitthal Tidke have been released on bail by the Additional Sessions Judge, Majalgaon while deciding criminal bail application No. 187 of 2022. He submitted that the sticks have been recovered. The injured has been discharged from the hospital. There is no need to have custodial interrogation of the appellants in view of the nature of the allegations.

7. Mr. Wattamwar, learned APP for respondent No1/State and Mr. Solanke, learned counsel for respondent No.2/first informant strongly opposed to grant anticipatory bail to the present appellants in view of specific role attributed to them in the F.I.R. Both of them submitted that the F.I.R. itself speaks in clear words that they have played major role in the commission of the offences. They have used weapons like sticks and stones while assaulting the family members of the first informant. The wife of the first informant was picked up by Bhanudas Tidke and thrown her on the ground. They submitted that only four sticks have been recovered. Remaining sticks are yet to be recovered. The investigation is

at initial stage. There are criminal antecedents against certain appellants.

8. Mr. Wattamwar, learned APP for the State also invited my attention to the statements of eye witnesses who are supporting to the narration given by the first informant. Both of them submitted that it is not a fit case to grant anticipatory bail, when the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 *prima facie* attracted.

9. Mr. Kulkarni, learned counsel for the appellants submits that so far as the criminal antecedents against the appellants Macchindra Tidke and Bhanudas Tidke are concerned, both of them have been acquitted by way of trial in crime Nos., 116 of 2004 and 18 of 2007.

9. Mr. S.B. Solanke, learned counsel for respondent No.2 also invited my attention to the reply affidavit filed by the first informant Balasaheb Rohidas Ujgare and copy of the discharge summary. He submitted that the first informant was admitted in Swami Ramanand Teerth Rural Government Medical College and Hospital, Ambajogain on 28.05.2022 and he was discharged on 05.06.2022, and now he is taking

follow up treatment. It shows seriousness of injuries caused to the first informant in the incident.

10. I have considered the submissions of both the sides. Perused the investigation papers made available by the learned APP for the State, copy of the reply affidavit filed on behalf of respondent No.2 and the copy of discharge summary report of the first informant.

11. On going through the impugned order dated 13.06.2022, it would be clear that co-accused namely, Ajay Tidke, Arjun Tidke, Pradeep @ Pratik Tidke and Chandrasen Tidke have been released on bail, however on certain conditions. The prayer for anticipatory bail came to be turn down in respect of the present appellants. On going through the copy of the F.I.R., it is revealed that crime No.81 of 2022 came to be registered against the appellants and others at Dindrud Police Station on the basis of F.I.R. lodged by Balasaheb Rohidas Ujgare. It is pointed out by Mr. Solanke, learned counsel for respondent No.2 that though the first informant reached to the police station and gave information about the incident on 26.05.2022 about 13.00 Hrs., the F.I.R. came to be registered at 22.53 Hrs. Be that as it may, the

offences alleged against the appellants are found bailable except offence under Section 452 of the Indian Penal Code and Sections Sections 3(1)(r), 3(1)(r)(s), 3(2)(Va) and 3(1)(w)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. So far as application of Section 3(1)(r) is concerned, on going through the F.I.R., it is noticed that the present appellants have not used abusing language with reference to caste of the first informant or his family members. It is Kundlik Tidke who alleged to have abused with reference to caste. As such, *prima facie*, provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act do not attract against the present appellants since there are no allegations against them about use of abusing language with reference to the caste. The only question remained about the custodial interrogation of the appellants.

12. On going through the impugned order, it is noticed that four sticks have been recovered. Even for the sake of argument, certain sticks are remained to be recovered, having regard to the nature of the allegations, it is not necessary to have custodial interrogation with the appellants. The investigating officer can recover the sticks

from the appellants by way of investigation and there is no such legal hurdle. So far as the question of smooth investigation is concerned, that can be taken care of by imposing certain conditions.

13. Having regard to the above reasons and discussion, I do not find any material to reject the prayer for anticipatory bail as prayed in the appeal.

ORDER

(i) The appeal is hereby allowed.

(ii) The impugned order of rejection of bail passed by the learned Additional Sessions Judge, Majalgaon in criminal bail application No. 188/2022 dated 13.06.2022, is hereby quashed and set aside.

(iii) In the event of arrest, the appellants/accused namely, **(1) Siddheshwar Bhanudas Tidke, (2) Macchindra Vitthal Tidke, (3) Bhanudas Vitthal Tidke and (4) Rajnikant Macchindra Tidke** in connection with crime No. 81 of 2022 registered at Dindrud Police Station, District Beed for the offences punishable under Sections 143, 147, 148, 149, 323, 324, 354, 452, 504, 506, 34 of IPC and Sections 3(1)(r), 3(1)

(r)(s), 3(2)(Va) and 3(1)(w)(i) 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) The appellants shall report their attendance once in a week at Dindrud Police Station i.e. on Sunday between 11.00 am to 12.00 noon till completion of the investigation.
- (b) The appellants shall not tamper with the prosecution witnesses and evidence in any manner.
- (c) The appellants shall not enter in village Bodkha, Tq. Kille Dharur, Dist. Beed till completion of the investigation.
- (iii) Inform the concerned police station and court accordingly.
- (iv) The appeal stands disposed of in above terms.

[SHRIKANT D. KULKARNI]
JUDGE