

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

47 CRIMINAL APPEAL NO.465 OF 2022

1. Vijaymala Vinayak Jadhav.
2. Radha Anil Jadhav. ... Appellants

Versus

1. The State of Maharashtra.
2. Silabai Sharad Pawar. ... Respondents

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Mr. Mahesh Bhosle, h/f Mr. Mahesh L. Muthal, Advocate for Appellants.

Mr. R. D. Sanap. APP for Respondent/State.

Mr. M. B. Sandanshiv, Advocate for Respondent No.2.

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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 10th August, 2022.

PER COURT.:

. The appellants have challenged the order passed by learned Additional Sessions Judge-2, Ambad, District Jalna in Criminal Bail Application No.151 of 2022, whereby the prayer for anticipatory bail came to be turned down.

2 Heard Mr. Mahesh Bhosle, holding for Mr. Mahesh Muthal, learned counsel for appellants, Mr. R. D. Sanap, learned APP for respondent No.1/State and Mr. M. B. Sandanshiv, learned counsel for

respondent No.2/first informant. Perused the impugned order passed below Exhibit-1 in Criminal Bail Application No.151 of 2022, copy of FIR in connection with Crime No.157 of 2022 registered at Ghansawangi Police Station, District Jalna and copy of FIR in connection with Crime No.162 of 2022 registered at Ghansawangi Police Station, District Jalna.

3 The learned counsel for appellants invited my attention to the order passed by this Court dated 6th July, 2022. He pointed out that this Court has observed while passing the order on 6th July, 2022 that the allegations levelled against the present set of appellants is to the extent of assaulting the first informant by kicks and fist blows and also then stated that had abused her with reference to her caste, but specific abuses have not been disclosed. As such, this Court *prima-facie* observed that the provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act,1989 (hereinafter referred to as “the Atrocities Act”) do not attract and pleased to grant interim protection on certain conditions. He submitted that the appellants have been released on interim bail. There is no report from the investigating officer that the appellants have misused their bail. He submitted that accused No.1-Vinayak Kisan Jadhav against whom allegations are levelled that he has abused with reference to caste and alleged to have beaten the first informant with stick, was arrested and

later on released on bail by the learned Additional Sessions Judge vide order dated 9th June, 2022. He submitted that there is also counter case filed by appellant No.2 against the first informant and others. The civil dispute is going on between the parties. There are no extraordinary circumstances to vacate the interim protection granted earlier by this Court. The interim protection granted by this Court needs to be made absolute by allowing the appeal.

4 Mr. R. D. Sanap, learned APP for the respondent/State and Mr. M. B. Sandanshiv, learned counsel for respondent No.2/first informant strongly opposed to confirm the interim protection granted by this Court earlier. Both of them submitted that the provisions of the Atrocities Act *prima-facie* attract. As such, there is bar to grant anticipatory bail. They further submitted that the first informant and her family members were brutally beaten in the incident and they have been referred for medical examination. Medical certificates are also placed on record. There are statements of eye-witnesses (five in number), who are supporting the prosecution case.

5 Mr. Sandanshiv, learned counsel for respondent No.2 invited my attention to certain photographs, which are at page Nos.36 and 37 and submitted that the first informant was badly beaten in the incident of assault and she became unconscious on the spot. By

making arrangement of private vehicle, she was taken to nearest hospital and thereafter, she was referred to Civil Hospital at Jalna for further line of treatment. She was admitted there for five to six days, which shows the seriousness of the incident and attack. He submitted that having regard to the role attributed against the appellants, it is not a fit case to release the appellants on anticipatory bail.

6 Mr. Sanap, learned APP for the State submitted that the investigation of the case is at initial stage and it may not be appropriate to grant anticipatory bail.

7 I have considered the submissions of both the sides, so also perused the order passed by this Court dated 6th July, 2022 whereby certain observations are made while granting interim protection to the appellants. In the context of observations made by this Court, I have again examined the copy of FIR vide Crime No.157 of 2022, registered at Ghansawangi Police Station, District Jalna against the appellants and one another, for the offence punishable under Section 324, 323 and 504 read with 34 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8 On careful study of the FIR referred above, it is revealed that the alleged incident had taken place on 26th May, 2022 about

08:00 am on account of digging holes for construction of a house. In the alleged incident, the present appellants and Vinayak Kisan Jadhav alleged to have assaulted the first informant by fist blows and kicks. Vinayak Jadhav alleged to have assaulted the first informant by using *Bambu* stick and alleged to have used abuses with reference to her caste. It is revealed during the course of argument and even after perusing the copy of order at page No.25 that Vinayak Kisan Jadhav came to be arrested in connection with Crime No.157 of 2022, registered at Ghansawangi Police Station, District Jalna on 7th June, 2022 and subsequently, released on regular bail vide order dated 9th June, 2022 at the hands of the learned Additional Sessions Judge-2, Ambad, District Jalna.

9 Now, the question remains about releasing the present two female members of the family of accused persons. As observed earlier, the role attributed against the present set of appellants is very much restricted to the extent of assaulting the first informant by fist blows and kicks. The offences alleged against the appellants are bailable under the respective penal sections of the Indian Penal Code. So far as Sections 3(1)(r) and 3(1)(s) of the Atrocities Act are concerned, this Court has *prima-facie* observed while passing the order dated 6th July, 2022 that abuses are of vague nature and as such, the provisions of the Atrocities Act *prima-facie* do not attract.

The same view needs to be endorsed after careful study of the FIR. There are no extraordinary circumstances to keep the appellants behind bars having regard to their limited role of assaulting to the first informant by fist blows and kicks. The injury certificates placed on record by the prosecution indicate that they have sustained simple injuries. It is also stated that the first informant has been discharged from hospital. Even though there are statements of eye-witnesses to that effect, there are no extraordinary circumstances to vacate the interim protection granted by this Court when there is no report of the investigating officer regarding misuse of interim bail.

10 In view of the above, following order is passed:

ORDER

- I. The criminal appeal stands allowed.
- II. The impugned order passed by learned Additional Sessions Judge-2, Ambad, District Jalna in Criminal Bail Application No.151 of 2022 dated 15th June, 2022 in connection with Crime No.157 of 2022, registered at Ghansawangi Police Station, District Jalna, for the offence punishable under Section 324, 323 and 504 read with 34 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Caste and

Scheduled Tribes (Prevention of Atrocities) Act, 1989,
is hereby quashed and set aside.

III. The interim protection granted by this Court vide order dated 6th July, 2022, is hereby made absolute on following conditions:

- a) The appellants shall not tamper with prosecution witnesses and evidence in any manner.
- b) The appellants shall remain present as and when called by the investigating officer to complete the remaining part of investigation.
- c) The appellants shall attend the concerned police station once in a week i.e. on Wednesday between 10:00 am to 11:00 am till completion of investigation.

IV. Inform to the concerned police station and Court accordingly.

V. The criminal appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]