

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 CRIMINAL APPEAL NO.575 OF 2022

1. Sau. Asha Kashinath Dhanwate
2. Tushar Sandip Punde
3. Anil Baban Gadhe ...Appellants

Versus

1. The State of Maharashtra
2. Rajesh Vinayak Shirsath ...Respondents

Mr Rajendra L.Kute, Advocate for Appellants
Mr P.G. Borade, APP for Respondent No.1 State
Mr P.B. Gapat, Advocate for Respondent No. 2

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 23rd SEPTEMBER, 2022

PER COURT :

1. This appeal is directed against the impugned order of rejection of anticipatory bail passed by the learned Additional Sessions Judge, Kopergaon, Dist. Ahmednagar in Criminal Bail Application No. 244/2022 dated 27.07.2022.
2. Heard Mr Kute, learned counsel for the appellants, Mr P.G. Borade, learned APP for respondent No.1/State and Mr P.B. Gapat, learned counsel for respondent No.2/first informant.
3. Mr Kute, learned counsel for the appellants submitted that this Court was pleased to grant interim protection to the appellants vide order dated 17th August, 2022, however, with certain conditions. He submitted

that the appellants are extending co-operation to the investigation. He submitted that interim protection granted by this Court need to be confirmed.

4. Mr Kute, learned counsel for the appellants further invited my attention to the copy of FIR dated 29.06.2022. He submitted that the allegations are in respect of abuses with reference to the caste attributed to Avinash Dhanwate, who has been released on regular bail after his arrest by the trial court. Another co-accused Vishwas Dhanwate is also released by the trial court. He submitted that even if allegations levelled in the FIR are taken at its face value, there is no role attributed to appellant No.2-Tushar. He submitted that provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to 'as the Atrocities Act' for the sake of convenience) do not attract against the appellants. The offences alleged against the appellants are all bailable, except sections of the Atrocities Act. Mr Kute, learned counsel has placed his reliance in case of ***Nandkishor Haribhau Kadam and Ors. Vs. State of Maharashtra reported in 2022 ALL MR (Cri.) 881*** (Aurangabad Bench). He also invited my attention to the copy of bail order passed by the learned Additional Sessions Judge in Criminal Bail Application No. 232/2022. He submitted that the alleged incident had taken place without any pre-mediation. Mere hurling abuses with reference to caste do not attract the provisions of the Atrocities Act in view of decision of this Court in ***Nandkishor Haribhau Kadam and Ors. Vs. State of Maharashtra (supra)***. He therefore urged to allow this appeal by confirming the interim protection granted earlier by this Court.

5. Mr P.G. Borade, learned APP for the State and Mr P.B. Gapat, learned counsel for respondent No.2 strongly opposed to allow this appeal.

6. Mr P.G. Borade, learned APP for the State submitted that there are specific allegations against the appellants in the FIR. The provisions of the Atrocities Act prima facie attract against them. He also invited my attention to the copy of bail order passed by the learned Additional Sessions Judge in Criminal Bail Application No. 244/2022 and submitted that it is not a fit case to grant anticipatory bail having regard to the nature of allegations levelled against the appellants in the FIR.

7. Mr P.B. Gapat, learned counsel for respondent No.2 argued on the similar liens and strongly opposed to grant anticipatory bail.

8. I have considered the submissions of learned counsel for both the sides and the learned APP for the State.

9. Perused the copy of FIR, copy of bail order passed by the learned Additional Sessions Judge, Kopergaon in Criminal Bail Application No. 232/2022 and copy of order passed in Bail Application No. 244/2022 by the same Court.

10. This Court vide order dated 17th August, 2022 was pleased to grant interim protection to the appellants by recording in-detail reasons.

11. It is to be seen whether there is need to vacate interim protection. On going through the copy of FIR, one would reveal that

allegations regarding giving abuses with reference to caste are attributed against Avinash Dhanwate and his uncle namely, Vishwanath Dhanwate. Both of them have been released on regular bail by the learned Additional Sessions Judge, Kopargaon vide order dated 11.07.2022 in Criminal Bail Application No.232/2022, however, with certain conditions.

12. Mr Kute, learned counsel for the appellants invited my attention to the said order more particularly, para No. 8. He pointed out that the alleged incident had taken place without any pre-mediation. The injury caused to the first informant and his wife are of simple nature. The investigation of above said crime is also at the verge of completion.

13. So far as the role attributed to the present appellants are concerned, they seem to have not played any role to the extent of giving abuses with reference to the caste. Even for the sake of moment accepted that they have echoed their voice with co-accused in hurling abuses with reference to the caste, not any way sufficient to attract provisions of the Atrocities Act in view of decision of this Court in case of **Nandkishor Haribhau Kadam and Ors. Vs. State of Maharashtra (supra)** wherein, it is made clear by this Court that mere calling a person by name of his caste, would not constitute offence under section 3(1)(s) of the Atrocities Act.

14. Having regard to the legal position made clear by this Court in case of **Nandkishor Haribhau Kadam and Ors. Vs. State of Maharashtra (supra)** and in view of the facts of the case in hand and in view of in-detail order passed by this Court dated 17th August, 2022, I do

not find any extraordinary circumstances to vacate interim protection granted earlier by this Court to the appellants. It would be just and proper to confirm the interim protection by allowing this appeal.

15. Needless to state that impugned order passed by the learned Additional Sessions Judge, rejecting the anticipatory bail is liable to be quashed and set aside.

ORDER

- (I) The Criminal Appeal is hereby allowed.
- (II) The impugned order of rejection of anticipatory bail passed by the learned Additional Sessions Judge, Kopargaon in Criminal Bail Application No. 244/2022 is hereby quashed and set aside.
- (III) The interim protection granted by this Court to the appellants namely, (1) Sau. Asha Kashinath Dhanwate (2) Tushar Sandip Punde and (3) Anil Baban Gadhe vide order dated 17th August, 2022 is hereby made absolute with the same conditions.
- (IV) Inform to the concerned Court and Police Station accordingly.
- (V) The Criminal Appeal stands disposed of in above terms.

[SHRIKANT D. KULKARNI, J.]

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