

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

927 CRIMINAL APPEAL NO.624 OF 2022

SUNIL KISAN NAWALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. B. G. Sagade, Advocate for Appellant.
Mr. R. D. Sanap, A.P.P. for Respondent/State.
Mr. Ganesh J. Kore, Advocate for Respondent No.2.

...

WITH
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BHAUSAHEB ASARAM MISAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. R. D. Sanap, A.P.P. for Respondent/State.
Mr. Ganesh J. Kore, Advocate for Respondent No.2.

...

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

DATE : 21st September, 2022.

PER COURT.:

. This Court vide order dated 30th August, 2022 was pleased to grant interim protection to both the appellants by imposing certain conditions. That order runs into six pages. Paragraphs 7 and 8 of the order dated 30th August, 2022 reflect that there was delay in lodging of FIR about four days at the instance of first informant / Nanda

Vishwanath Salve. It was observed by this Court that the FIR came to be lodged by Bhausahab vide Crime No.315 of 2022 appears to be prompt in time and even disclosing the incident on phone to the police officer of the concerned police station. In this background, it is to be seen whether the interim protection granted by this Court in favour of the appellants vide order dated 30th August, 2022 in connection with Crime No.317 of 2022, registered at Gangapur Police Station, Taluka Gangapur, District Aurangabad, for the offences under Section 354-A, 506 read with 34 of the Indian Penal Code and under Section 3(1)(za) (A), 3(1)(w), 3(1)(w)(i), 3(1)(w)(ii), 3(1)(2), 3(IV) and 3 (V) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, needs to be confirmed or otherwise.

2 Heard Mr. Sagade, learned counsel for the respective appellants, Mr. Kore, learned counsel for respondent No.2 in both the appeals and Mr. Sanap, learned APP for the State as well in both the appeals.

3 Mr. Sagade, learned counsel for the respective appellants submitted that the FIR lodged by the first informant / Nanda Salve is nothing but an attempt made by her to give counterblast to the FIR lodged by appellant Bhausahab vide Crime No.315 of 2022. He submitted that there was inordinate delay in lodging the FIR by the first

informant / Nanda Salve, which itself shows that the foundation of the FIR is very much suspicious. The appellants have been falsely implicated in above said crime. They are teachers of the same school. He, therefore, urged to confirm the interim protection granted by this Court.

4 Mr. Sanap, learned APP for the State strongly opposed to grant anticipatory bail to the appellants. He submitted that there are statements of witnesses recorded by the investigation officer. There is also one independent statement of a person, who has supported to the prosecution case. He submitted that the investigation is in progress. Having regard to the nature of allegations levelled against the appellants, the provisions of the Atrocities Act *prima-facie* attract. He submitted that supplementary statement of the first informant came to be recorded wherein she has disclosed that it was her *bona-fide* mistake in telling the date of incident as 4th August, 2022, but in fact the date of incident was 1st August, 2022. He, therefore, strongly opposed to allow this appeal.

5 Mr. Kore, learned counsel for respondent No.2 / first informant also argued on similar lines. He submitted that the provisions of the Atrocities Act attract in this case. There are specific allegations against both the appellants. Both of them alleged to have

abused to the first informant. Both the appellants alleged to have used abusive language against the first informant with reference to her caste and thrown away her water bottle and thereby humiliated her. In view of these specific allegations levelled against the appellants, it is not a fit case to release them on anticipatory bail.

6 Having regard to the submissions of both the sides and the learned APP for the State, I have gone through the police papers and the report submitted by the SDPO, Gangapur. It is true that the investigation of Crime No.317 of 2022, registered at Gangapur Police Station is in progress. The investigation officer seems to have recorded the statement of certain witnesses. The statements of four witnesses are found to be chance witnesses whereas one witness is found to be of independent person. Be that as it may, but the question comes about date of incident. It appears from the investigation papers that the investigation officer has recorded supplementary statement of first informant Nanda Salve on 11th August, 2022, just after three days of registration of the FIR. She has disclosed while recording the supplementary statement that the date of incident disclosed by her while lodging the FIR as 4th August, 2022, was incorrect. The date of incident was 1st August, 2022 about and time 10:00 am to 10:30 am. It is, therefore, clear that the statement given by the first informant / Nanda Salve while lodging of FIR is at variance with her

supplementary statement on material point of date of incident, which speaks doubt about genesis of the incident, which she is describing in the supplementary statement. If the alleged incident had taken place on 1st August, 2022, according to the version of the first informant, why she has waited to lodge the FIR till 8th August, 2022 and that too till lodging of the FIR by appellant Bhausahab on whose instance Crime No.315 of 2022 seems to have been registered, which was prompt in time. It is, therefore, clear that the genesis of the FIR lodged by the first informant / Nanda Salve appears to be unworthy of credence. While granting interim protection, this Court has taken into consideration all the aspects and was pleased to grant interim protection, however, with certain conditions. On perusing the investigation papers and the status report submitted by the SDPO, Gangapur, it would reveal that investigation is going on smoothly. It is not the case of the prosecution agency that the appellants are not co-operating in the investigation. As such, it can be safely inferred that the appellants are extending co-operation to the investigation agency and they are abided by the conditions imposed by this Court while granting interim protection as pointed out earlier whereas genesis of the FIR is found to be suspicious. Under these circumstances and in view of in detail reasons recorded by this Court in the order dated 30th August, 2022, it is necessary to allow these appeals by confirming the interim protection granted earlier by this Court to both the appellants.

Hence, the following order is passed:

ORDER

- I. Both the criminal appeals stand allowed.
- II. The impugned order of rejection of anticipatory bail passed by the learned Additional Sessions Judge, Vaijapur by common order below Exhibit-1 in Criminal Bail Application No.278 of 2022 dated 19th August, 2022, is hereby quashed and set aside.
- III. The interim protection granted by this Court to both the appellants vide order dated 30th August, 2022, is hereby confirmed with the same conditions by modification in condition (a), which reads thus:
 - a) The appellants shall report their attendance once in a week i.e. on every Saturday between 10:00 am to 11:00 am at Gangapur Police Station till filing of charge-sheet.
- IV. Remaining conditions stand unaltered.
- V. Inform to the concerned police station and Court accordingly.
- VI. Both the criminal appeal stand disposed of.

[SHRIKANT D. KULKARNI, J.]