

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

CRIMINAL APPEAL NO. 559 OF 2021

Sanket Bhausahab Kharade

..APPELLANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. A.D. Ostwal, Advocate for appellant

Mr. R.B. Bagul, A.P.P. for respondent no.1 – State

Mr. A.M. Gaikwad, Advocate for respondent no.2

....

CORAM : R.G. AVACHAT, J.

RESERVED ON : 07th JANUARY, 2022

PRONOUNCED ON : 11th JANUARY, 2022

ORDER :

1. Heard.

2. The challenge in this appeal is to order dated 27th September, 2021 rejecting the prayer of the appellant herein for granting anticipatory bail. The appellant herein is one of the accused persons in Crime No. 659 of 2021 registered with Newasa Police Station, Dist. Ahmednagar for the offences punishable under Sections 354, 324, 143, 147, 148, 149, 323, 504 and 427 of the Indian Penal Code ('I.P.C.') and under Sections 3(1)(r), 3(1)(s), 3(1)(w) (i) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act').

3. Learned counsel for the appellant would submit that all the co-accused have been granted anticipatory bail. The appellant is, therefore, entitled for such relief on the ground of parity. According to him, if any incriminating role is attributed to the appellant herein, same was played by him in exercise of Right of Private Defence. He took this Court through some documents on record to indicate that the Public Works Department undertaken the exercise of removal of encroachments. In the said process a kiosk belonging to one Bhau Gorde has been removed. The very kiosk came to be placed at such a place that obstructed the appellant and his family members' access to their shop. Bhau Gorde was, therefore, requested to remove the said kiosk from the very place. The village panchayat had also passed resolution in that regard. According to learned counsel, there is delay in lodging the First Information Report ('F.I.R.'). The allegations therein have been exaggerated and concocted as well. He, therefore, urged for grant of relief.

4. Learned A.P.P. and learned counsel for Respondent No.2 – informant would submit that an appeal has been preferred by the informant for cancellation of anticipatory bail granted to the co-accused. The role played by the appellant herein is quite different than that of the co-accused. The appellant herein assaulted the informant with an iron rod. Same is to be recovered. Modesty of the daughter of the informant was also outraged by the appellant herein. According to learned counsel, there is C.C.T.V. footage to

indicate the appellant to have committed the offences in question. Dismissal of the appeal was, therefore, urged for.

5. F.I.R. came to be lodged on 29th August, 2021 in relation to the previous day's incident. As such, there is delay of twenty four hours in lodging the F.I.R. It has been alleged in F.I.R. that for two days work of removal of encroachment was in progress in the village. The appellant herein and his family members, without informing the informant and his family members, removed the kiosk and substantially damaged the same. The informant alongwith her son was present near Chaudhary Complex at the village. She enquired with the appellant herein about removal of their kiosk. The appellant was enraged thereby and started abusing her. He took up an iron rod lying on the road and assaulted on her waist. Relations of the appellant (co-accused) arrived there. They too alleged to have assaulted the informant and abused over her caste. Co-accused – Ashabai is alleged to have pulled the informant's *sari*. The informant fell unconscious. Her ear-rings and gold ornaments worth Rs.5,000/- went missing. After a while she gained consciousness. Her son – Sandesh and brother-in-law – Ramesh accompanied her to lodge the report with police station. On the way to police station, the appellant and others (co-accused) assaulted the informant's daughter, son and brother-in-law as well. The appellant is also alleged to have came physical with the informant's daughter with a view to outrage her modesty.

6. True, if one goes by the narration in the F.I.R. as it is, the appellant and co-accused are prima facie found to have involved therein. There is however other side of the story. The F.I.R. has been lodged after little over twenty four hours of the alleged incident. All the co-accused have been granted anticipatory bail. The State has not preferred appeal against the order granting anticipatory bail. True, the appellant herein is attributed with assaulting the informant with iron rod. He is also alleged to have outraged the modesty of the daughter of the informant. The record indicates that many of the villagers are on one side and the informant and her family on the other. The kiosk belonging to the informant appears to have been removed in a drive undertaken of removal of encroachments on public land. Even the village panchayat was required to pass the resolution in that regard. The appellant has placed on record some photographs where from it is evident that the informant was aggressor. She is seen to have caught hold of the appellant's face. Son of the informant also appears to have assaulted the appellant. The appellant might have placed on record the photographs which are convenient for him. Learned counsel for the informant has filed an affidavit-in-reply, wherein some photographs have also been placed on record to indicate the informant to have fallen on the road and appearing to be unconscious. Her injury certificate has also been placed on record.

7. The Trial Court has made following observations :-

“6] In above said circumstances, having into rival submissions

contentions and availed record, relied video recording appeared in D.V.D. filed by the informant as well as documents of investigation prima facie inclined in impugned crime in all 11 accused are implicated. The accused no.11 unknown lady yet to be detected. It is alleged against the applicant and his relatives and other accused that they all were assembled at the time of alleged incident of crime. Prior to that at 10.30 a.m. while removing the encroachment he has damaged and thrown out tin-shade of informant and her relatives. In that respect when she alongwith her son Sandesh has asked explanation. Thereon by annoyedly he has assaulted to her by the rod which was laying on ground. While it his relatives accused no.2 to 4 and unknown lady came there. They all assaulted to informant by pulling hairs of informant and abused on her caste. Thereafter when informant and her relatives were going to lodge the police report in Kukana police outpost at that time also the applicant and accused no.5 to 10 assaulted to them. Further in Kukana Police outpost the applicant assaulted to her daughter and by scuffling with her and outraged her modesty. Considering such raised allegations it revealed in FIR and police report substantial material allegations are raised against the applicant. Against him raised the allegations he has assaulted by a rod to informant and her son and daughter. By such allegations it inclined the alleged rod by which assaulted by the applicant certainly a material part and factum of alleged crime. The same is required to be detected discovered and seized. Further against him levelled allegations that he has scuffled with daughter of informant and outraged her modesty. Such allegations also serious in nature. Though by the availed video recording appeared in DVD submitted by the informant does not inclined the factum in regard to outraging the modesty of daughter of informant. However in that

regard necessary required facts circumstances might be investigated and interrogated. Though against him not raised allegations in regard to abusing to informant or her relatives on their caste, however in view of raised allegations against him and in that respect sufficient considerable plea grievance as well as supportive material of medical testimonials availed and collected while investigation. The close relative of applicant namely Sarita Kharade has allegedly raised the counter crime and case dated 28.08.2021 by vide CR.No.I-663 / 2021 dated 31.08.2021. Thereby considering the facts circumstances asserted in CR.No.I-659/ 2021 and CR.No.I-663 / 2021 it transpires both the alleged incidents are quite different and varied. By it one could not be presume that the informant has raised crime against applicant as a counter blast to crime raised by her.

7] Furthermore though as per FIR and police report prima facie does not inclined that the applicant was aware and cautious about the caste of informant and his relatives. Whereby the offence under section 3 (2) (v-a) , 3 (2) (w) (i) of The S.C. and ST (P.O. A.) Act-1989 does not constitute. However prima facie the offence punishable under section Indian Penal Code with regard to accusation of assaulting by a iron rod and outraging modesty of daughter of informant indicating by the contentions of FIR and police report. By such circumstances certainly the substantial involvement of applicant is inclined in crime. Thereby as the factum of false implication of him doesn't revealing, therefore he is not entitled for the protection of pre-arrest bail.”

8. The Trial Court, prima facie, found the offences punishable under Sections 3(2)(v-a), 3(2)(w)(i) of the Act to have not been made out. However, the offences punishable under the Indian Penal Code were prima

facie made out. Needless to mention, the offences registered against the appellant herein under the I.P.C. are bailable one.

9. No doubt, offence did take place. It is however not clear as to what had triggered the commission of offence? Who started the quarrel first? The informant has simply given her side of story, whereas the photographs on record indicate her to have been aggressor. There is prima facie nothing to indicate the appellant to have exceeded his right of private defence, if any. In this factual backdrop, the Court is inclined to allow the appeal. Hence, the following order :-

Criminal appeal is allowed. Impugned order dated 27th September, 2021 is hereby set aside. In the event of arrest of the appellant in connection with Crime No. 659 of 2021 registered with Newasa Police Station, Dist. Ahmednagar for the offences punishable under Sections 354, 324, 143, 147, 148, 149, 323, 504 and 427 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant be released on executing P.R. bond in the sum of Rs. 15,000/- (Rupees Fifteen Thousand) with surety in the like amount. The appellant shall not tamper with the prosecution evidence. He shall appear before the Investigating Officer as and when required.

(R.G. AVACHAT, J.)