

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

CRIMINAL APPEAL NO. 818 OF 2022

1. Nagesh s/o Tukaram Khetre
Age : 25 Years, Occu. : Labour

2. Pravin s/o Tukaram Khetre
Age : 28 Years, Occu. : Labour
Both R/o. Palashi, Tq. Sengaoon,
Dist. Hingoli.

... APPELLANTS

VERSUS

1. The State of Maharashtra,
Through Police Station Goregaon,
Dist. Hingoli

2. Kacharu s/o Piraji Khillare,
Age : 70 Years, Occu.: Labour,
R/o. Palashi, Tq. Sengaoon,
Dist. Hingoli.

... RESPONDENTS

Mr. A. V. Lavte, Advocate for the appellants
Mr. R. B. Bagul, APP for the respondent/State
Ms. Sayali S. Kulkarni, Advocate for respondent No. 2
(appointed)

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.**

**RESERVED ON : 29th NOVEMBER, 2022
PRONOUNCED ON: 02nd DECEMBER, 2022**

JUDGMENT (PER- R. M. JOSHI, J.):-

1. Appellants are seeking anticipatory bail in connection with Crime No. 0217 of 2022 registered at Goregaon Police

Station, Tal. Sengaon, Dist. Hingoli for the offences punishable under Sections 326, 324, 504, 506 read with Section 34 of the Indian Penal Code and 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. On 1st of October, 2022 report came to be lodged with the police in respect of the incident occurred on 25th September, 2022 at about 9.30 am when informant/victim was proceeding towards his house, on public road Nagesh Khetre and Pravin Khetre came and accused him for exercising witchcraft on their father and in fact of knowing victim to be of scheduled castes community abused him and caused assault on him with iron rod and stick.

3. Learned counsel for the appellants submits that there is unjustified delay in lodging FIR and which makes the information given to the police not reliable and it is prone to concoction. According to him there is possibility of false implication and unless the statement of the informant is supported by some other evidence on record it cannot become a

ground to deny bail to the appellants.

4. Learned APP opposed the said submissions contending that there is medical evidence on record to show that the informant sustained injury to his wrist in the said assault.

5. Learned counsel for respondent No. 2 vehemently opposed grant of bail contending that there is bar created under Section 18 of the Act for anticipatory bail. She pointed out that the averment in the report regarding assault on the victim with the allegation of witchcraft is duly covered by provision of Section 3(1)(zb) of the Act. Thus, according to her it is not a fit case for grant of anticipatory bail taking into consideration material evidence on record.

6. The alleged incident has occurred on the public road on 25th September, 2022. Police papers indicate that one witness has allegedly intervened in the incident. Thus, the incident in question was known to the persons other than informant. Therefore, there is no reason or justification for not recording

the report in respect of the incident on 25th September, 2022 or immediately thereafter. It is sought to be contended by the informant that since he was not well report was not lodged immediately but the said contention does not find support from the evidence collected during the investigation. Even as per the case of informant he sustained fracture to his right hand which would not be sufficient reason for not lodging FIR in absence of he being shown to be indoor patient.

7. It is also pertinent to note that the incident in question has occurred on public road. However, there is no witness who has heard the alleged utterances made by the appellant. Investigation till that time also doesn't reveal victim practicing witchcraft to become cause for the occurrence of incident. Considering the delay caused in lodging FIR the possibility of false implication of the appellants cannot be ruled out. Considering overall circumstances appearing on the face of the record, case is made out by the appellants for confirmation of ad-interim relief. Hence the order.

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Impugned order dated 15th October, 2022 in Criminal Bail Application No. 335 of 2022 passed by Additional Sessions Judge-2, Hingoli is set aside.
- (iii) Interim relief granted vide order dated 21st October, 2022 is made absolute with same condition
- (iv) Fees of the appointed counsel for respondent No.2 is quantified Rs. 6000/- and it is to be paid by the High Court Legal Services Authority, Sub Committee, Aurangabad.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

ssp