

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 39 OF 2022**

Ganesh Ashok Phad ...Appellant

Versus

The State of Maharashtra and ors. ...Respondents

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Mr. Amey C. Sawant i/b Suresh M. Sabrad for the Appellant.
Ms. M.M. Deshmukh, APP for the State.

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CORAM : N.R. BORKAR, J.
DATE : 19 SEPTEMBER 2022.

P.C. :-

This appeal is filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“SCST Act” for short) against an order passed by learned Additional Sessions Judge, Niphad dated 27 December 2021 in Criminal Bail Application No. 518, 519 and 520 of 2021.

2. By the order impugned, the trial Court rejected the anticipatory bail application filed by the present appellant, who is accused in C.R. No. 328 of 2021 registered with Lasalgaon, Police Station for the offences punishable under Section 354B, 143, 147, 148, 149, 323, 324, 427, 504, 506 read with Section 34 of IPC and under Sections 3(1)(r)(s), 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. On 20 January 2022, this Court passed the following order:

“1 Heard learned counsel for the appellant.

2 By this appeal, the appellant seeks pre-arrest bail in connection with C.R. No. 328/2021 registered with the Lasalgaon Police Station, Nashik, for the alleged offences punishable under Sections 354-B, 143, 147, 149, 324, 323, 427, 504 and 506 of the Indian Penal Code and under Sections 3(1)(r) (s), 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act ('SCST Act').

3 Learned counsel for the appellant submits that the incident in question had taken place on 15th April 2021, in the evening, at about 6:30 p.m. He submits that with respect to the dispute, both parties i.e. the appellant as well as the respondent Nos. 2 and 3 had gone to the police station to lodge a complaint against each other. He submits that however, the said dispute was amicably settled between the parties. Learned counsel relied on the station diary entry which is at page 19 of the application, in support of his submission.

4 A perusal of the station diary shows that the appellant and the respondent Nos. 2 and 3 and others had gone to the police station to lodge complaints against each other, however, as the dispute was resolved, no complaint was registered.

5 Learned counsel for the appellant further submits that thereafter the respondent Nos. 2 and 3

approached the Lasalgaon Police Station once again with respect to the same incident dated 15th April 2021 and lodged an FIR as against the appellant and others alleging the aforesaid offences. He submits that pursuant to the registration of the said FIR, the appellant was arrested on 26th April 2021 and was released on bail on the same day. He further submits that on 2nd August 2021, the police served a notice on the appellant under Section 41A of the Code of Criminal Procedure, pursuant to which, the appellant attended the police station and the appellant's statement was recorded. Learned counsel for the appellant submits that on 3rd November 2021, the appellant received an intimation of the filing of charge-sheet as against him. He submits that for the first time, the appellant learnt that provisions of SCST Act were applied in the charge-sheet. He submits that the said provisions were not disclosed at the time of registration of the FIR. He submits that pursuant to the said information that the provisions of SCST Act were applied, the appellant applied for pre-arrest bail, which was rejected by the trial Court.

6 Learned counsel for the appellant states that investigation is complete and charge-sheet is filed and as such custody of the appellant is not warranted. He further submits that when the FIR was lodged, no allegations of SCST Act were made nor were the said provisions applied. He submits that the the allegations under the SCST Act were completely an afterthought and was invoked at a very belated stage, when the charge-sheet was filed.

7 Issue notice to the respondents, returnable on 2nd March 2022. Learned A.P.P waives notice on

behalf of the respondent No.1-State and seeks time to take instructions. In addition to the court notice, the appellant to serve the respondent Nos.2 and 3 by Advocate's notice and file an affidavit of service before the returnable date.

8 Notice to indicate that an endeavour shall be made to dispose of the appeal finally at the stage of admission.

9 Having heard learned counsel for the appellant, the appellant has prima facie made out a case for grant of interim protection. Accordingly, the appellant is granted interim protection from arrest on the following terms and conditions:

ORDER

(i) In the event of the arrest, the appellant be enlarged on bail on executing P.R. Bond in the sum of Rs.10,000/- with one or two sureties in the like amount;

(ii) The appellant shall report to the Investigating Officer of the concerned Police Station, as and when called.

10 Stand over to 2nd March 2022.

11 All concerned to act on the authenticated copy of this order.”

4. The learned APP submits that the State has filed the charge-sheet before the competent Court.

5. In view of the filing of charge sheet, instead of entertaining the present appeal it would be appropriate to direct the appellants to file regular bail application before the competent Court and to continue

the order passed by this Court dated 20 January 2022 till the decision of the competent Court in the application for regular bail.

6. The Appellants are directed to file application for regular bail within a period of three weeks from today. If such bail application is filed, the concerned Court shall decide it on its own merits without being influenced by the order passed by this Court dated 20 January 2022.

7. The interim anticipatory bail granted to the appellants by order dated 20 January 2022 shall continue to operate till the decision of the competent Court in the application for regular bail.

8. The Criminal Appeal is disposed of in aforesaid terms. Needless to mention that the concerned Court before passing an order on regular bail application of appellants, shall grant an opportunity of hearing to Respondent No. 2.

(N.R. BORKAR, J.)