

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 81 OF 2022

Vijay Rambhau Sonawane and Anr.	...Appellants
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr. Rameshwar Gite - Advocate for the Appellants
Ms. S. D. Shinde - APP for the Respondent No. 1
Mr. Ajinkya Udane – Advocate for the Respondent No. 2

**CORAM : PRASANNA B. VARALE &
 S. M. MODAK, JJ.**

DATE : 21st MARCH, 2022

P. C. :-

- . Heard the learned counsel for the Appellants.
2. The Appellants are before this Court challenging the Order dated 12/01/2022 passed by learned Additional Sessions Judge, Niphad, whereby the Application filed at the instance of the appellants for grant of Anticipatory bail is rejected. Thus in the present appeal, the appellants prayed for quashing and setting aside the impugned Order and further prayed for grant of anticipatory bail to the appellants.
3. The facts emerged from the perusal of the material as follows:

Respondent No. 2 – Mrs. Sushmita Dipak Pawar approached Niphad Police Station on 10/12/2021 and submitted that she is residing at Ugaon

Road, Beghar Vasti, Tal. Niphad, District Nashik along with her family members. She helps the family by earning livelihood by doing labour. It is specifically stated in the report that she belongs to Hindu-Mahar community and is married to one Dipak Pawar, who belongs to Hindu-Bhil community. It is stated in the report that on 10/12/2021 at 6.30 p.m., she was in her house along with her father-in-law and at that time, her brother-in-law namely Gokul Pawar visited her house. Soon after visit of Gokul Pawar, Appellant No. 2 – Sanjay Puri and his sons Lalit Sanjay Puri, who were armed with knife, and other son Vaibhav Sanjay Puri along with his nephew i.e. Appellant No.1-Vijay Sonawane, who were armed with wooden log, came near to the house of informant-complainant and raised quarrel by abusing the Respondent No. 2's brother-in-law on their caste. They abused in filthy language and then both the appellants assaulted brother-in-law Gokul Pawar by wooden log. To save his life Gokul Pawar ran away from the house and while he was running in the lane, Vaibhav Puri followed him. The brother-in-law Gokul Pawar reached near one grocery shop of Ashok Dubey. At that spot Vaibhav Puri gave knife blows to Gokul Pawar. The other family members of Respondent No. 2 namely, her father-in-law, sister-in-law-Savita and her brother- Sai Somnath and one person Sunil Mali rushed to spot and they made attempt to stop the accused persons.

4. In that attempt Respondent No. 2 received minor injuries to her thumb. Though she made a request to the assailant-accused not to assault her brother-in-law Gokul Pawar, but the accused-assailant paid no heed to her and continued the assaults.

5. Then Gokul Pawar was shifted to Primary Health Center, Niphad by arranging one motorcycle of Sunil Mali. On preliminary examination, the Medical Officer attached to the Primary Health Center, Niphad asked the family members of the complainant to shift Gokul Pawar to Civil Hospital, Nashik. The Family members were of the opinion that shifting to Civil Hospital may require more time for providing immediate medical treatment. As such Gokul Pawar was admitted to a private hospital, namely, Janseva Hospital Niphad.

6. The learned counsel for the Appellants vehemently submitted that firstly the provisions of the Prevention of Atrocities on Scheduled Caste and Scheduled Tribes Act are not applicable in the present matter. He submitted that both the parties are of the same caste. Perusal of the record shows that one caste certificate is placed on record, which is in respect of Appellant No. 1 – Vijay Sonawane. It is at Exh. D (page 37). The learned counsel for the Appellants submits that as the Appellant Nos. 1 and 2 are in relation to *inter-se*, it can be safely be presumed that Appellant No. 2 is also Scheduled Tribe in view of the certificate of Appellant No. 1 placed

on record. An attempt was made to submit before this Court that Respondent No. 2 is not a member of the Scheduled tribe community as stated in the opening part of her report, as she belongs to Hindu-Mahar community.

7. In so far as these submissions are concerned, firstly, merely placing the copy of the Caste Certificate on record issued by the Sub-Divisional Officer Niphad, in our opinion, it would not be conclusive and concrete material to arrive at conclusion for recognizing the social status of the Appellants. Certainly, these documents are required to be gone through the further test as documentary evidence and it can be done only a day later but not at this stage.

8. In so far as the social status of the Respondent No. 2 is concerned though the Respondent No. 2 in her complaint report at ending part referred to her social status as a Hindu-Mahar Community she further stated she married to Dipak Pawar and Dipak Pawar and his family belonging to Hindu-Bhil Community.

9. The learned counsel for the Appellants vehemently submitted that the report only makes a reference that the Appellant No. 1 was carrying a wooden log, whereas there is no reference against the Appellant No. 2 about carrying of any weapon in his hand. Though the learned counsel for the Appellants made this submission but perusal of the report clearly

shows that allegations against both the Appellants having active role in the assault and it reads :

"संजय उत्तम पुरी त्यांची मूले ललेश संजय पुरी हा हातात चाकु व वैभव संजय पुरी आणि संजय पुरी यांचा भाचा विजय रामभाऊ सोनवणे हे हातात लाकडी दांडे घेवून आमचे घरा जवळ आले त्यांनी माझे भाया गोकुळ पवार यांना तू आमच्या वडीलांना का मारले तुम्ही भिलटे जास्त माजले आहे. असे म्हणून घाणघाण शिवीगाळ करून संजय पुरी आणि विजय सोनवणे यांनी लाकडी दांड्याने भाया गोकुळ यांना जोर जोरात मारण्यास सुरवात केली".

10. This statement clearly indicates the overt act of both these Appellants. The learned counsel also made an attempt to submit before this Court that report lodged against the Appellant is counterblast to the report lodged by Appellant No. 2.

11. Now the perusal of both these reports placed on record clearly shows that the report lodged against these Appellants at the instance of Respondent No. 2. The perusal of the FIR against the Appellants shows that information was completed and her brother-in-law was subjected to assault. On these facts, the report filed by present appellants on 10/12/2021. Whereas the information through the report of Appellant No. 1 was received at 2.43 hours on 10/12/2021. It was also an attempt

of learned counsel for the Appellants that Appellant No. 2 was not at all present when the incident took place and he submitted that in assault of Appellant No. 2, Appellant No. 2 received a fracture to his hand and he was under treatment. The counsel for the Appellant invited our attention to the copy of the Medical Certificate placed on record at page no. 43. Now again this submission would be a defense of Appellant No. 2.

12. Certainly, the appreciation of such evidence of alibi cannot be done by this Court at this stage while deciding the issue of an Appeal firstly, and secondly grant of anticipatory bail to the Appellants.

13. At the cost of repetition, we state that the material placed before this Court clearly indicates the presence of the Appellants, as well as an overt act so also abuse being heard.

14. In our opinion, it is also not in dispute that as per report the Appellant No. 1 was carrying the wooden log, the assault laid by both the Appellants was by the said wooden log. The learned additional Sessions Judge by considering all these factors was not inclined to allow the application and reluctantly, the application was rejected.

15. We see no reason or occasion to interfere with the Order passed by the learned Additional Sessions judge. We see no independent reason in granting anticipatory bail to the Appellants, the appeal thus being dehors of merit and it deserves to be dismissed and accordingly it is dismissed.

16. The learned counsel for Respondent No. 2 was appointed by this Court and the learned counsel assisted this Court by inviting our attention to the necessary material placed on record.

17. These observations are on the aspect of the present appeal and grant of anticipatory bail. The learned Court below shall not be influenced by these observations in case the Appellants avail the remedy of filing regular bail application.

18. The learned counsel appointed by this Court and fees of the learned counsel to be paid fees as per rules.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)