

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

CRIMINAL APPEAL NO. 252 OF 2022

1. Bandu Shivaji Kondhare
2. Ganesh Shivaji Kondhare
3. Neeta Bandu Kondhare
4. Sachin Maruti Choudhari ...Appellants

Versus

The State Of Maharashtra And Anr. ...Respondents

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Mr. Shailesh Kharat, Advocate for the Appellants.

Mr. Anup Lahoti, Advocate for Respondent No.2.

Mr. A. R. Patil, APP for the Respondent – State.

Mr. V. M. Ghogare, (PSI), Bharti Vidyapith Police Station.

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CORAM : PRAKASH D. NAIK, J.
DATE : 15th SEPTEMBER, 2022.

PER COURT:-

1. This is an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as “SC/ST (Prevention of Atrocities) Act”).

2. Heard both sides for final disposal of the appeal.

3. The appellants are apprehending arrest in C.R. No I-429 of 2021 registered with Bharti Vidyapeeth Police Station, Pune on 21.05.2021 for the offences punishable under Sections 427, 504, 506 r/w Section 34 of Indian Penal Code (for short “IPC”) and Sections 5 & 10 of the SC/ST (Prevention of Atrocities) Act.

4. The appellants had preferred an application for anticipatory bail before the Sessions Court which has been rejected by order dated 10.02.2022.

5. The First Information Report (for short 'FIR') was registered on 21.05.2021 alleging that the complainant is conducting the hotel at Ambegaon Budruk, Pune. Due to pandemic of Corona, the hotel was closed from March – 2020. The premises is obtained on Leave and License basis from Mamta Misal. Agreement is notarized. The accused were consuming eatables in the hotel and not making the payment towards it. FIR was lodged against them in the past vide C.R. No.425 of 2016. On 22.01.2021, the nephew of the complainant informed him that Bandu Kondhare, Ganesh Kondhare, Neeta Bandu Kondhare & Sachin Choudhari came near the hotel with JCB and with the help of JCB removed cement coba and dug a pit in front of the door of hotel. On 23.01.2021, the complainant visited the spot and noticed the damage caused by accused. At that time, Bandu Kondhare, Ganesh Kondhare, Neeta Bandu Kondhare & Sachin Choudhari (Appellants) came to the spot and threatened him. The complainant questioned them for causing damage to the hotel. The accused stated that, on the previous occasion he has lodged the case under the SC/ST (Prevention of Atrocities) Act, against them but no harm was

caused to them. Complainant was threatened and abused on the basis of his caste. FIR was registered on 21.05.2021.

6. Learned Advocate for the appellants submitted that the First Information Report (herein after referred to as "FIR") is false. There is delay of 4 months in lodging FIR. The land belongs to accused No.1. It does not belong to Mamata Misal. The first informant is used by Smt. Mamta Dalal to grab property. The first informant and others have encroached on the said property. The applicant No.1 has been threatened that complaint would be filed against him. In the previous FIR registered vide C.R. No.420 of 2016, the appellant Nos.1 & 2 were granted anticipatory bail. The offence is registered under Indian Penal Code which are bailable in nature. Sections 5 & 10 of the SC/ST (Prevention of Atrocities) Act are not attracted. The incident in question had not occurred within public view. There were no independent witnesses. The appellant No.2 filed complaint dated 09.08.2019 and 18.08.2019. He relied upon the decision of the Hon'ble Supreme Court in the case of **Swaran Singh and Others V/s. State and Another, (2008) 8 SCC 435**.

7. Learned APP submitted that, although the FIR was registered for offences under Sections 5 & 10 of the SC/ST (Prevention of Atrocities) Act. Subsequently Section 3(1)(r)(s)(za)(E), 3(2)(va) were added. The FIR would indicate that, various other offences

under Atrocities Act are made out under the SC/ST (Prevention of Atrocities) Act. This is second offence registered against appellant Nos.1 to 2. During the course of investigation, statements of witnesses were recorded which supports the version of the complainant. Two of them are eye witnesses to the incident. In view of the bar under Section 18 of the SC/ST (Prevention of Atrocities) Act, the appellants are not entitled for anticipatory bail.

8. Learned Advocate for the respondent No.2 submitted that there is no delay in registering FIR. The complaints were preferred to the police. However, cognizance was not taken. Although the accused claims right in the property, they have not filed any suit. They are interested in dispossessing the complainant. The statements of independent persons are recorded during the course of investigation. Hence, the appeal may be rejected.

9. The relationship between the complainant and the accused is hostile. Two complaints were filed against the complainant at the instance of the accused dated 09.08.2019 and 18.09.2019. The incident in question had occurred on 23.01.2021. The FIR was registered on 21.05.2021. The FIR does not refer to presence of any other independent person at the time of the alleged abuses on caste. The FIR was registered for the offences punishable under Sections 5 & 10 of the SC/ST (Prevention of Atrocities) Act. Both

the offences are not made out. Subsequently other offences under Atrocities Act were added. Registration of the offence in the past is not the requirement of Section 5 of the said Act. The said provision relates to the commission of offence while the first conviction is in force.

10. I have perused the statements relied by prosecution. According to prosecution, Rajesh Bharekar and Mayuresh Shinde are eye witnesses to the incident. Their statements were recorded on 25.05.2021. The incident had occurred on 23.01.2021. The FIR is registered after 4 months from the date of alleged incident. On perusal of the statements would indicate that they are closely acquainted with the first informant. Statement of Mayuresh Shinde refers to the fact that the complainant is his uncle. The statement of Siddhesh Katagade and Mr. Ritesh Mashare also reflects that they are closely acquainted with the first informant. Thus, apparently there are no statements of independent eye witnesses. The FIR is silent about presence of any other person. In **Swaran Singh and Others V/s. State and Another (supra)** it was indicated that presence of members of public to state that, incident has occurred in public view would mean not merely relatives or friends. Considering the aforesaid circumstances, Section 18 of Atrocities Act would not be impediment to allow this appeal.

ORDER

- i. Criminal Appeal No.252 of 2022 is allowed;
- ii. Order dated 10.02.2022 passed by the Sessions Court rejecting the application for anticipatory bail is set aside.
- iii. Interim order dated 9th March, 2020 is confirmed.
- iv. In the event of arrest of the appellants in connection with C.R. No. I-429 of 2021 registered with Bharti Vidyapeeth Police Station, Pune, the appellants be released on bail on furnishing P. R. Bond in the sum of Rs.15,000/- each with one or more sureties in the like amount;
- v. The appellants shall attend the investigating officer as and when called for.
- vi. Criminal Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)