

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

CRIMINAL APPEAL NO.533 OF 2022

- 1) Rajesh Kumar Bharat Singh;
- 2) Kamal Kishore Singh; and
- 3) Rupesh Bharatraj Singh .. Appellants

Versus

State of Maharashtra and Anr. .. Respondents

**WITH
INTERIM APPLICATION NO.1659 OF 2022**

Chimibai Ravindra Watas .. Intervener/
Applicants

IN THE MATTER OF :

Rajesh Kumar Bharat Singh and Ors. .. Appellants

Versus

State of Maharashtra and Anr. .. Respondents

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Mr.Arun K. Rajput, Advocate for the Appellants.

Mr.S.R. Agarkar, APP for the Respondent No.1-State.

Mr.Yasir Kapadia, Mr. Shaikh Firoz Imtiyaz, Advocate for Respondent No.2 and for Applicant in IA.

ACP Vyankat Andhale, Kalwa Division, Thane, present.

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CORAM : PRAKASH D. NAIK J.

DATED : JUNE 7, 2022.

P.C. :

Heard both the sides.

2 Admit.

3 Appeal is taken up for hearing.

4 The complainant/respondent no.2 in Appeal has also preferred separate application for intervention. Learned counsel representing respondent no.2/intervenor waives service of notice for said respondent and submitted that he is ready to argue the Appeal.

5 The appellants are apprehending arrest in connection with C.R.No.98 of 2022, registered with Daighar Police Station, Thane, for the offences punishable under Sections 354, 354-B of Indian Penal Code ("IPC", for short) and Section 3(1)(w)(i), 3(1)(w)(ii) and 3(1)(s) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC & ST Act", for short).

6 The appellant had preferred application for anticipatory bail before the Sessions Court at Thane, which has been rejected vide order dated 13th May, 2022.

7 The case of the prosecution as spelt out in the FIR dated 7th April, 2022, is that the father-in-law of complainant passed

ancestral land at S.No.99/1 and 99/2 and 98/1 in Shil Taluka. The complainant's husband and other relatives are also holding land. Temple of goddess and well is situated on the property. The accused were obstructing complainant from visiting temple and fetching water. She was abused being Adivashi and threatened. On 6th April, 2022 at 10:00 a.m., the complainant and Leelabai visited temple at that time, accused called the complainant by folded hands. The complainant feel that accused is apologizing for previous complaint lodged against him. She approached accused no.1. The accused pulled her clothes and molested her. Her blouse was torn. FIR was lodged at 00:47 on 7th April, 2022.

8 Learned advocate for the appellants submitted that the FIR is false. There is dispute between both the sides with regards to the property. There is delay in lodging FIR. Although it is alleged that the incident in question had occurred on 6th April, 2022, the FIR was lodged on 7th April, 2022. The said FIR is counterblast to FIR dated 6th April, 2022 lodged by sister-in-law of applicant no.1 for offences under Section 354 A of IPC, Section 8 and 12 of Protection of Children from Sexual Offences Act ("POCSO Act", for short), against the husband of the complainant. It is further submitted that even prior to lodging the present FIR, one more FIR is lodged against appellant no.1

and others vide C.R.No.I-9 of 2022, for similar offences. The appellant no.1 had preferred criminal Appeal No.145 of 2022, before this Court in which interim protection has been granted and the Appeal is pending.

9 Learned APP submitted that the subject FIR is the independent offence and this Appeal can be decided separately on merits. FIR clearly spells out the offences. During the course of investigation, statements of various witnesses were recorded. Statement of Leelabai Kamble has been recorded under Section 164 of Cr.P.C. She has supported the version of the complainant. Torn clothes of complainant are recovered. Custodial interrogation of the appellants is necessary. Anticipatory bail cannot be granted to the appellants.

10 Learned advocate for respondent no.2 submitted that the appellants are creating hurdles to the complainant and others in respect to the property belonging to them. The accused have carried out illegal constructions. Specific allegations are attributed to the appellants which are amongst the Atrocities Act. The accused has committed offence of outraging modesty. They have abused the complainant on the basis of caste. The property in question belongs to complainant and others.

11 Learned counsel for the appellants in rejoinder has relied upon the decision in the case of *Hitesh Varma Vs. State of Uttarakhan and Ors dated 5th November, 2020, delivered in Criminal Appeal No.707 of 2020*, and relied upon the paragraph 18 of the said decision, which refers to the civil dispute pending between the parties and registration of the FIR under the Atrocities Act, wherein Anticipatory bail was granted to the concerned person. Learned APP, however, makes reference to offence under Section 3(1)(r) of the Atrocities Act.

12 The alleged incident had taken place on 6th April, 2022, at about 10:00 a.m. and the FIR was lodged at 00:47 on 7th April, 2022. the complaint was filed against husband of the complainant by sister-in-law of the appellant no.1 on 6th April, 2022 at 20:29 p.m., for offence under Section 354-A of IPC, Section 8 and 12 of POCSO Act. Learned APP had contended that incident which is the subject matter of the incident dated 6th April, 2022 had occurred on 27th March, 2022. Be that as it may, the fact remains that the impugned FIR was registered after the FIR dated 6th April, 2022. Apparently, there is dispute between the parties over property. Statement of Leelabai Kamble has been recorded during the course of investigation. The witness was accompanying the complainant, and, apparently the relative of the complainant. The complainant herself has stated that

she went alone at the place where the accused called her that the alleged incident had occurred. There are no other eye witnesses to the incident, nor any statement of independent witness to support the alleged act reflected in the FIR. Custodial interrogation of appellants is not necessary.

13 Considering the circumstances, there would be impediment in allowing the application inspite bar under Section 18 of the Atrocities Act.

14 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Appeal No.533 of 2022, is allowed;
- (ii) The order dated 13th May, 2022, passed by Additional Sessions Judge, Thane, is set aside;
- (iii) In the event of arrest of appellant in C.R.No.98 of 2022, registered with Daighar Police Station, Thane, the appellants be released on bail on executing P.R.Bond in the sum of Rs.20,000/-, each, with one or more sureties in the like amount;

- (iv) The appellants shall attend the investigating officer on 13th, 14th and 15th June, 2022, between 11:00 a.m. to 01:00 p.m., and, thereafter, as and when called for;
- (v) Criminal Appeal No.533 of 2022, stands disposed of accordingly;
- (vi) Interim Application No.1659 of 2022, is disposed of.

(PRAKASH D. NAIK, J.)