

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

CRIMINAL APPEAL NO.663 OF 2022

1. Mumtaj Abdul Rehman Tolkar,
2. Imtiyaj Abdul Rehman Tolkar, &
3. Sharmila Imran Pathan Appellants
Versus
The State of Maharashtra & Anr. Respondents

Mr. Saurabh Butala, Advocate a/w. Mauvi Sharma, for the Appellants.

Mr. P. H. Gaikwad, APP for the Respondent No.1-State.

Mr. Veerdhawal Deshmukh, Advocate (appointed) for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 14th OCTOBER, 2022

P.C. :

1. The appellants have challenged the order dated 27.6.2022 passed by the Additional Sessions Judge, Mangaon, District-Raigad passed in their applications for anticipatory bail in connection with C.R. No.28/2022 registered at Mahad City Police Station under Sections 323, 504 read with 34 of the Indian Penal Code and under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and

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Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard Shri Saurabh Butala, learned counsel for the appellants, Shri P. H. Gaikwad, learned APP for the respondent No.1-State and Shri Veerdhawal Deshmukh, learned appointed counsel for the Respondent No.2.

3. The FIR is lodged in this case by the respondent No.2 on 13.3.2022. He has stated that one Shabbir Tarlekar was his friend. Along with Shabbir and two others the informant had gone to Kinjaloli (khurd). At around 5.00 a.m. on 13.2.2022 when they were near the house of their friend Naeem, the appellant No.1 came out and started abusing the informant's friend. She abused him and was making allegations against him. The appellant Nos.2 & 3 came there and they joined her in abusing. It is alleged that all the appellants then abused him with reference to his caste. On this basis, the FIR is lodged.

4. Learned counsel for the appellants submitted that this FIR is a counter-blast to the FIR lodged by the

appellant No.1 on 19.2.2022 at Mahad City police station vide C.R. No.12/2022 under Sections 452, 323, 504, 506, 509 read with 34 of IPC. That particular FIR was specifically lodged against Naeem, Shabbir, Siddhesh and the present complainant. It is in respect of the incident dated 13.2.2022 that had taken place at around 3.00 a.m.. The accused therein under the influence of liquor terrorized the appellant No.1's family; and for that the said FIR was lodged.

5. Learned counsel for the appellants submitted that the respondent No.2 herein was arrested in connection with that offence and, therefore, as a counter-blast, the present FIR is lodged against the appellants on false allegations.

6. Learned counsel for the respondent No.2 submitted that the FIR clearly makes out all the offences alleged against the appellants by the respondent No.2. The delay in lodging the FIR is also explained by him. As Shabbir was his friend, he had requested the informant not to lodge any FIR because the appellants were his relatives.

7. Learned APP produced the investigation papers before the Court which include the statements of eye witnesses recorded under Section 164 of Cr.P.C. The statements of Siddhesh Yelage, Naeem Tolkar and Shabbir Taralekar were recorded on 28.3.2022. These statements were recorded under Section 164 of Cr.P.C. According to the learned APP, these eye witnesses have supported the case of the informant and, therefore, protection should not be granted to them.

8. I have considered these submissions. As rightly submitted by learned counsel for the appellants, the FIR is lodged on 13.3.2022 after delay of about a month. Learned counsel for the respondent No.2 submitted that the respondent No.2 had submitted an application in the form of complaint to the police authorities on 22.2.2022. Therefore that delay is not of a month but it is only upto 22.2.2022. In any case, the complaint is definitely given by the respondent No.2 after the FIR was lodged against him by the appellant No.1 on 19.2.2022.

9. Learned counsel for the appellants pointed out that the appellant No.1 had also approached the police station on 13.2.2022, but, at that point of time only an N.C. was registered. The appellant No.1 had immediately approached the police station and it does appear that the respondent No.2 after having been arrested and being released on bail approached the police and lodged this complaint. There is substance in the submission of learned counsel for the appellants that the present FIR is filed against the appellants as a counter-blast to the N.C. and the FIR lodged by the appellant No.1. The statements of eye witnesses are recorded under Section 164 of Cr.P.C. on 28.3.2022. Their police statements were recorded on 15th & 16th March, 2022. Thus, there is also delay in recording their police statements.

10. Considering all these aspects, there is a possibility of false implication and, therefore, the appellants can be protected by an order of anticipatory bail. Hence, the following order :

:: O R D E R ::

- i. The appeal is allowed.
- ii. In the event of their arrest in connection with C.R. No.28/2022 registered at Mahad City police station, District-Raigad, the appellants are directed to be released on bail on their furnishing P.R. bonds in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each with one or two sureties in the like amount each.
- iii. The appellants shall cooperate with the investigation.
- iv. Criminal Appeal is disposed of accordingly.

(SARANG V. KOTWAL, J.)