

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

CRIMINAL APPEAL NO. 712 OF 2022

Yogita Ketan Shah @ Yogita Vijay Shelar ...Appellant

V/s.

1. State Of Maharashtra

2. Tushant Gangadhar Aarde

...Respondents

WITH

CRIMINAL APPEAL NO. 803 OF 2022

Yatish Vijay Shelar

...Appellant

V/s.

1. State Of Maharashtra

2. Tushant Gangadhar Aarde

...Respondents

Mr. Samir A. Vaidya and Ms. Devyani R. Dhawale, Advocate for the Appellants in both Appeals.

Mr. Ajay Patil, A.P.P. for the Respondent No.1 – State.

Mr. Kishor D. Walanju, Advocate for Respondent No.2 in both Appeals.

Mr. Trushant G. Aarde, Respondent No.2 in-person is Present.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 2nd DECEMBER, 2022.

P.C. :

. Both the Appeals are preferred under Section 14(A) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for short* 'SC/ST Act'). The Appellants are apprehending arrest in C.R. No.32 of 2022 registered with Kulgaon Police Station, Badlapur, District : Thane, for offences punishable under Sections 354, 329, 323, 504, 506 of Indian Penal Code (*for short* 'IPC') and Sections 3(1)(r), 3(1)(s), 3(1)(va) and 3(2) of SC/ST Act.

2. By a speaking Order dated 28th July 2022, the Appellant in Appeal No.712 of 2022 has been granted interim protection by the Co-ordinate Bench. By an Order dated 12th August 2022, the Appellant in Appeal No.803 of 2022 has been granted ad-interim relief by this Court.

3. The case of the Complainant is that, he belongs to Nav-bouddha caste. He is an Advocate by profession. On 10th March 2022, he had been to Mahad for Court work. On 11th March 2022, he was proceeding by his Innova car from Mahad to Badlapur. He picked up his wife from Karjat and both of them were proceeding towards Badlapur. While they reached at Vangani Petrol Pump, near Kullad Tea Stall at about 3.15 pm. they halted for tea. At that time, Yatish Shelar and Yogita Shelar i.e. Appellants came in their Innova car. The Complainant gave signal to them. However, Yatish Shelar deliberately tried to give dash to the vehicle of Complainant. The Complainant questioned him about it. The Complainant stopped his vehicle at the side of road and alighted from his vehicle. Yatish Shelar and Yogita Shelar i.e. Appellants herein, got down from their vehicle. They caught the collar of Complainant and abused him on his caste. When Complainant's wife got down from the vehicle to rescue him, Accused – Yatish shelar outraged her modesty. Yogita Shelar pulled hair of Complainant's wife. Complainant's wife told the accused that, her husband is Advocate. The accused abused them. The accused used filthy language against wife of Complainant and threatened them. In this brief

premise, the First Information Report (*for short 'FIR'*) was registered on 11th March 2022 at about 23.37 (11.37 pm.) vide C.R. No.32 of 2022.

4. Cross FIR was registered on 12th March 2022 vide C.R. No.33 of 2022 by Yogita Ketan Shah/Appellant in Criminal Appeal No.712 of 2022 against two persons for offences under Sections 354, 329, 341, 506 read with Section 34 of IPC. In the said FIR it is alleged that, the Complainant was travelling with her brother Yatish Shelar. While they reached at Vangani Petrol Pump near Kullad Tea Stall, they noticed that, an Innova car was halted on road and two persons were sitting in the car. They were unknown persons. When the Complainant's brother questioned the inmates of the car, the driver of the car got down with a steel rod and abused the Complainant's brother. He also assaulted him. The Complainant got down from the car to save her brother. The woman sitting in the said car got down and started assaulting Complainant and her brother. Injury was caused to the finger of Complainant. The accused committed an act amounting to outraging the modesty of Complainant.

5. During the course of hearing of Appeals on 18th November 2022, it was submitted by learned Advocate for the Appellants that, photographs at page Nos. 31, 33 & 34 of Criminal Appeal No.803 of 2022 are the photographs of a rear side of the vehicle having Number MH-46, BZ-8055 which is deceptively displayed as "*BOSS*" is the car belonging to Respondent No.2. It was recorded in Order dated 18th November 2022 that,

the Investigating Officer had not taken any steps under the law to initiate any action against the owner of the said car to remove the said number-plate, Superintendent of Police, Thane (Rural) was directed to take necessary remedial measures in that behalf.

6. We have heard both the sides. Despite the fact that, we heard learned Advocate Mr. Walanju for Respondent No.2 at length and since Respondent No.2, who was present in the Court was not satisfied with the arguments of his Advocate and also considering the fact that, the Respondent No.2 is an Advocate by profession, we also offered him an opportunity of being heard in person for about 15 minutes. It appeared to us that, he crossed all the limits of Advocacy and started raising his voice in open Court, tending to browbeating this Court.

7. We have perused complaints lodged by both the sides. We have also perused original record of investigation of the present crime produced by the Investigating Officer. Perusal of the record would indicate that, though the alleged offence has occurred at public place, the statements of eye witnesses clearly indicate that, it was the Respondent No.2, who was the aggressor and not the Appellants. We have scrutinized the statements of five eye witnesses, who do not support the contention of Respondent No.2 that, the Appellants hurled abuses on his caste. Thus, there is no independent corroboration at all to the allegations made by Appellants with respect to abuses on caste and at this stage, at least the same are

unsubstantiated for want of basic rule of corroboration to that effect. Thus, there is no independent corroborative evidence to establish the fact that, in fact abuses on caste of Respondent No.2/Complainant were hurled by the Appellants within public view. It is also pertinent to note that, the contents of FIR dealing with the narration of incident does not indicate that, the Complainant was known to the accused or they were aware of his caste. However, in summary portion of the FIR it is stated that, inspite of knowing that, the Complainant belongs to Nav-bouddha caste, the accused had abused him on his caste. The contention of learned Advocate for Respondent No.2 is that, the material contradictions if any, will have to be considered during trial and this is not the stage to appreciate such infirmity.

8. After perusing the FIR and the record of investigation, we are *prima facie* of the opinion that, the version of Complainant is concocted. The alleged incident as claimed by first informant is not corroborated by any independent witnesses, whose statements have been recorded during the course of investigation. The parameters to hold the incident had occurred within public view are therefore lacking in the present case. In the light of factual aspects of this case, the bar under Section 18 of the SC/ST Act, would not preclude this Court from granting pre-arrest bail to the Appellants. Hence, interim protection granted to the Appellants deserves to be confirmed.

ORDER

- i) Criminal Appeal Nos.712 of 2022 and Criminal Appeal No. 803 of 2022 are allowed.
- ii) Interim Order dated 28th July 2022 passed in Criminal Appeal No.712 of 2022 and Order dated 12th August, 2022 passed in Criminal Appeal No.803 of 2022 are hereby confirmed.
- iii) In the event of arrest, the Appellants be enlarged on bail on furnishing P.R. bond in the sum of Rs.15,000/- each with one or two local sureties in the like amount.
- iv) The Appellants shall report to the Investigating Officer as and when called after receipt of Notice in writing from the concerned Officer specifying the date and time thereof, till filing of Final Report.
- v) Both Appeals are allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)**(A.S. GADKARI, J.)**

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