

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

CRIMINAL APPEAL NO. 914 OF 2019

1. Chintaman Niljekar
 2. Dipesh Bablu Chintaman Niljekar
- ...Appellants

Versus

1. The State of Maharashtra
 2. The Inspector of Police,
Khadakpada Police Station.
 3. Minakshi Mahadev Doiphode
- ...Respondents

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Mr.Rishi Bhuta a/w Mr.Anurag Ghag, Advocate for the Appellants.

Mr.Devendranath Joshi, Advocate for Respondent No.3.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Nana Landge, P.S.I. Khadakpada Police Station, Present.

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

PER COURT:

1. This appeal is preferred under Section 14-A of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short “SC/ST (Prevention of Atrocities) Act”). The Appellants are apprehending arrest in Crime No.I-85 of 2019 registered with Khadakpada Police Station, Dist. Thane, for offences under Sections 143, 147, 148, 324, 354-B, 506, 294, 394 of Indian Penal Code and Sections 3(1)(r)(s)(w)(I)(II), 3(2)(V) of the SC/ST (Prevention of Atrocities) Act.

2. It is alleged that, on 26.02.2019, the son of complainant was lighting crackers celebrating the surgical strike by India. At that time, Dipesh @ Bablu Niljekar came to the spot on motorcycle. He was asked to stop since complainant's son was burning crackers. Dipesh slapped him. At about 6.30 p.m., the complainant gave call to father of Dipesh Niljekar and told him about the incident. However, he counter questioned her. On 03.03.2019, the complainant questioned Dipesh Niljekar about the incident of slapping her son. At that time Dipesh Niljekar told her that she should not teach him. He started assaulting complainant. Her sister intervened. Dipesh threatened her that, he would outrage her modesty and would sexually assault her daughter. He also abused them on caste. Father of Dipesh came to the spot and he used obscene words against the complainant's sister. They called one lady. She was accompanied by other persons. Dipesh pulled her *Dupatta* and touched her chest. The first informant was assaulted with iron rod and stump. During the incident, she lost her ear tops. Dipesh Niljekar snatched her Mangalsutra. Both the accused disrobed complainant's sister and assaulted her. Her nephew came to the spot. He was assaulted. They approached Police. They were sent for treatment.

3. The Appellants had preferred the application for anticipatory bail before the Sessions Court. By order dated 07.03.2019 interim relief was granted to them. The application was rejected vide order dated 24.06.2019.

4. The co-accused Alka Chintaman Niljekar (wife of Appellant No.1), Parshuram Koli, and Yogesh Bhoir preferred application for anticipatory bail before Sessions Court viz. Anticipatory Bail Application No.819 of 2019. By order dated 24.06.2019 the said application was allowed. While allowing the said application it is observed that, in this case there is a counter case. The accused No.1 has lodged complaint against the complainant and her family members bearing crime No.84 of 2019. Similar allegations are there in the complaint of accused No.1. There are allegations of outraging modesty, beating and robbery. It seems there are counter cases against each other with similar allegations against each other. No specific overt act is given to the said applicants. Presence of those accused in custody is not required.

5. This appeal was initially heard on 09.07.2019 and interim relief is granted by this Court which has been extended from time to time. It is pointed out that, on completing investigation, charge-sheet is filed.

6. Learned Advocate for the Appellants submitted that the offence under the SC/ST (Prevention of Atrocities) Act is not made out. There are no independent witnesses. Investigation is completed and charge-sheet is filed. Custodial interrogation is not necessary. FIR was lodged by Appellant No.2 with same police Station, which is first in point of time, vide C.R. No.I-84 of 2019 for offences under Sections 394, 354, 504, 506, 324, 143, 147, 148 of IPC. The FIR against the Appellants is counterblast to aforesaid FIR. The alleged abuses were not uttered within public view. Except the complainant and her relatives, there are no independent persons to corroborate their version.

7. Learned A.P.P. and learned Advocate for Respondent No.3 submitted that the offences under the SC/ST (Prevention of Atrocities) Act is made out against the Appellants. Specific role has been attributed to the Appellants. The Appellants are not entitled for relief under Sections 438 of Cr.P.C. in view of Section 18 of the SC/ST (Prevention of Atrocities) Act. The Respondent No.3 has filed Affidavit opposing reliefs. There are antecedents to the discredit of Appellants.

8. Interim relief is in force from 09.07.2019. During the pendency of the Appeal, charge-sheet has been filed. FIR was registered at the behest of Appellant No.2 vide C.R. No.I-84 of

2019 on 04.03.2019 for offences under Sections 394, 354, 504, 506, 324, 143, 147 & 148 of IPC. In the said FIR it is alleged that, on 03.03.2019, the complainant in the case against Appellants slapped Appellant No.2. She gave blow by some object on nose of Appellant No.2, which caused injury. He called his mother. There was quarrel and scuffle between them. Sister of complainant and her son were also present and they abused Appellant No.2 and his mother and threatened that they would implicate them in Atrocities case. Nephew of complainant pulled *Saree* of mother of Appellant No.2 and touched her chest. He also snatched her ear tops and ornaments. Information was given to police. The Appellant No.2 and his mother were sent to Rukminibai Hospital for treatment. Their FIR was registered vide C.R. No.84 of 2019 at about 00.53 a.m. The counter FIR against Appellants with similar allegations was registered vide C.R. No.85 of 2019 at 02.24 a.m. on 04.03.2019. The accused in the complaint lodged by Appellant No.2 had preferred application for anticipatory bail before this Court vide order dated 26.06.2019, interim relief was granted to them. The application was allowed vide order dated 11.07.2019 on the ground that, in respect to the incident dated 03.03.2019, there are cross cases filed by the parties against each other. FIR was registered vide C.R. No.85 of 2019. Custodial interrogation is

not necessary. Thus, there are no cross complaints against each other. It is pertinent to note that the witnesses are close relations of the complainant. The prosecution could not point out statements of independent witnesses to corroborate the version of alleged abuses on caste. Prima facie it is difficult to state that, incident of abuses on caste had occurred within public view. Custodial interrogation is not necessary as investigation is complete.

ORDER

- i) Criminal Appeal No.914 of 2019 is allowed.
- ii) Order dated 24th June, 2019 passed by Additional Sessions Judge, Kalyan rejecting Anticipatory bail application No.394 of 2019 is set aside.
- iii) In the event of arrest of Appellants in C.R. No. I-85 of 2019 registered with Khadakpada Police Station, 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 report Investigating Officer as and when called.
- v) Appeal is disposed off.

(PRAKASH D. NAIK, J.)