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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 888 OF 2022**

1. Jagdish Sajjankumar Banka,
aged 43 years, Indian inhabitant, permanently
residing at C-32, Tirupati Plaza, Balaji Nagar,
Bhayander (West), Dist. Thane-401 101.
2. Satish Sajjankumar Banka,
age 47 years, Indian inhabitant, permanently
residing at C-412, Tirupati Plaza, Balaji Nagar,
Bhayander (West), Dist. Thane-401 101. ..Appellants

Versus

1. State of Maharashtra,
at the instance of Bhayander Police Station
C.R.No. 309/22
2. Baburao Ramchandra Yadav,
Age 53, Room No.5, Mangal Kunj,
Ram Mandir Road, Bhayander (West),
Thane-401 101. .. Respondents

Mr. Siddharth Jha a/w. Mr. Subhash Jha i/by Law Global Advocates
for Appellants
Mr. S.S.Hulke, APP for State
Mr. Shantilal Jadhav, ACP – Bhayander Division

**CORAM : A. S. GADKARI &
MILIND N. JADHAV, JJ.**

DATE : 14th September, 2022.

P.C.:

. The Appellants have impugned an Order dated 02.09.2022
passed below Exh.1 in Criminal Bail Application No. 3092 of 2022

rejecting the Application filed by Appellants under Section 438 of the Code of Criminal Procedure Code, 1973 (“Cr.P.C.”) for pre-arrest bail in C.R. No.I-309 of 2022 under Sections 504, 506, 427 of Indian Penal Code read with Section 3(1)(r), 3(1)(s) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard Mr. Jha, learned counsel for Appellants and Mr. Hulke, learned APP for Respondent-State. Perused the record.

3. It is a fact on record that, in pursuance of notices dated 23.06.2022 and 27.06.2022 issued under Section 41(A) of the Cr.P.C., the Investigating Officer of the present crime had directed Appellants to remain present before him on 26.06.2022 and 29.06.2022 respectively at 11:00 a.m. for the purpose of interrogation in the present crime. Eight directions were enumerated in the said notices. It was specifically directed that, in case, the Appellants commit default, necessary action will be initiated against them under Sub-section 4 of Section 41(A). That, instead of appearing before Investigating Officer on 26.06.2022 and 29.06.2022, the Appellants under advice filed Criminal Bail Application No. 3092 of 2022 for pre-arrest bail. As noted earlier, said application came to be rejected by impugned Order dated 02.09.2022.

4. By now, the law relating to Section 41(A) of Cr.P.C. is well crystalised. As the Investigating Officer has issued notice to the

Appellants under Section 41(A) of Cr.P.C., it indicates that, the investigating agency was and is not inclined to arrest the Appellants immediately unless and until they commit breach of any of the eight conditions/directions prescribed in the said notices dated 23.06.2022 and 27.06.2022 respectively.

5. In view thereof, we hereby direct Appellants to attend Investigating Officer, Bhayander Police Station on 21.09.2022 and 22.09.2022 between 11:00 a.m. to 2:00 p.m. and join the process of investigation.

It is made clear that, the Investigating Officer shall not detain Appellants beyond 2:00 p.m. in the police station on any count.

6. In case, the Investigating Officer forms an opinion that, the arrest of the Appellants is necessary, he shall issue a notice of 48 hours in advance to them about the same.

7. In view of the above, impugned Order dated 02.09.2022 is set aside and Appeal is allowed in the aforesaid terms.

[MILIND N. JADHAV, J.]

[A. S. GADKARI, J.]

SONALI
SATISH
KILAJE

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