

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.921 OF 2021

1. Tushar Vilas Dukare, Age 24 years,
2. Vilas Chandrakant Dukare, Age 50 years,
Both R/o.Village Shelu, Tal.Karjat,
District Raigad.

Appellants

versus

1. The State of Maharashtra
2. Kundalik Nago Wagh, Age 45 years,
R/o.Katkarwadi, Shelu, Dist.Raigad.

Respondents

Mr.Gaurav Parkar, Advocate for Appellants.
Mr.Ajinkya Udane, Advocate for Respondent no.2.
Mr.Arfa Sait, APP, for Respondent-State.
Mr.Kisve (ASI), Neral Police station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th August 2022

PC :

1. This is an appeal u/s.14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act for short'). Appellants have challenged the order dated 30th October 2021 passed by Sessions Court.

2. Appellants are apprehending arrest in C.R No.219 of 2021 registered with Neral Police Station on 17th October 2021 for offences under Sections 323, 504, 506 r/w 34 of IPC and Section 3(1)(4), 3(10(s), 3(2)(va) of the Act.

3. The case of prosecution is that on 15th October 2021 at about

10 am the accused came near open space situated near residence of complainant and they were intending to start construction. The complainant questioned them. Accused pushed the mother of complainant. He was assaulted. Accused abused the complainant and others by referring to their caste.

4. The appellants preferred an application for anticipatory bail before the Court of Sessions. The said application was rejected by order dated 30th October 2021.

5. Learned advocate for appellants submitted that alleged incident had occurred on 15th October 2021 and the FIR was lodged on 17th October 2021. Omnibus statement in FIR does not attract provisions of the Act. Appellant no.2 had pursued the petition of disqualification of accused Shivaji Kharik and he was disqualified from the post of Sarpanch. The FIR was registered against appellant to seek vengeance. The complainant and his mother were sent for medical examination and it was recorded that they had not sustained any injuries. On the next date they visited Ulhasnagar Civil Hospital and took medical treatment after one day after the incident. It is alleged by the complainant that accused were constructing construction on the land of complainant, however, the land belongs to accused no.4 who is the brother of appellant no.2 and complainant has no locus to question them. The alleged offence had not occurred within public view. There were no individual persons to corroborate the version of first informant.

6. Learned APP submitted that investigation is in progress. In view of bar u/s.18 of the Act, the appellants are not entitled for

anticipatory bail. Specific role has been attributed to the appellants. Offences as alleged are made out. Statements of witnesses were recorded during investigation.

7. Learned advocate for respondent no.2/complainant submitted that first informant and his relatives were abused on the basis of caste. The incident had occurred within public view. The complainant and his mother were assaulted. The appeal for anticipatory bail may be rejected.

8. The incident had occurred on 15th October 2021. The FIR was registered on 17th October 2021. The offence under IPC registered against appellants are bailable in nature. There are no independent persons to corroborate the version of complainant. During investigation the statement of relatives and close associates of informant were recorded. It cannot be said that incident had occurred within public view. Custodial interrogation of appellants is not necessary.

ORDER

- (i) Criminal Appeal No.921 of 2021 is allowed;
- (ii) Order dated 30th October 2021 passed by Sessions Court, Raigad rejecting application for anticipatory bail preferred by appellants is set aside;
- (iii) Interim order dated 15th November 2021 passed by this Court is confirmed;
- (iv) In the event of arrest of appellants in FIR No.219 of 2021 registered with Neral Police Station, the appellants be enlarged on bail on executing PR bond in the sum of Rs.10,000/- each with one

or two sureties in the like amount;

(v) The appellants shall attend investigating officer as and when called;

(v) Criminal Appeal is disposed off.

(PRAKASH D. NAIK, J.)

MST