

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

CRIMINAL APPEAL NO.925 OF 2022

1. Sunil Raosaheb Pawar,
2. Mahadev Shivaji Salgar,
3. Shiddhu Mahadev Salgar,
4. Bandu @ Narsinh Annappa Sesware,
5. Vijay @ Vijaykumar Hanmant Maharnur
 @ Mhanur
 Versus
The State of Maharashtra & Anr.

....Appellants

.... Respondents

Mr. Kuldeep U. Nikam, Advocate a/w. Prasad Avhad, for the Appellants.

Mr. S.R. Agarkar, APP for the Respondent No.1-State.

Mr. Balwant Vitthal Salunkhe, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th OCTOBER, 2022

P.C. :

1. The appellants have challenged the order dated 14.9.2022 passed in Criminal Bail Application No.843/2022 thereby rejecting the appellants' application for anticipatory bail. The appellants are seeking anticipatory bail in connection with C.R. No.272/2022 registered at Umadi police station, District-Sangli on 3.9.2022 under Sections 143, 147, 148, 149,

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323, 341, 324, 504, 506 of the Indian Penal Code and under Sections 3(1)(r)(s) and 3(2)(v)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'Atrocities Act').

2. Heard Shri Kuldeep Nikam, learned counsel for the appellants, Shri S.R. Agarkar, learned APP for the respondent No.1-State and Shri Balwant Salunkhe, learned counsel for the respondent No.2.

3. The FIR is lodged by the respondent No.2. He has stated that on 18.8.2022 the appellant Siddhu Salgar was selling liquor. The informant had opposed and, therefore, there was enmity between the respondent No.2 and the other influential persons from the village. On 2.9.2022 the informant and his friend Dattatraya were returning back to village at about 4.00 p.m. At that time, all the appellants came there. They stopped the informant and his friend; and they assaulted both of them with sticks, kick and fist blows. The appellant Sunil Pawar abused the informant with reference to his caste. On this basis, the FIR is lodged.

4. Learned counsel for the appellants submitted that the FIR is filed with *malafide* intention. The allegations are false. It is a result of previous enmity. The appellants' group had filed previous NCs against the informant. Those NCs are at Exhibits-C,D & E dated 2.9.2022 and 18.11.2021. All this history shows that the appellants are falsely implicated.

5. Learned counsel for the appellants submitted that the FIR does not mention any other independent person who could have heard the abuses and, therefore, the offence under Section 3(1)(r),(s) of the Atrocities Act is not made out. He submitted that from the entire allegations none of the ingredients of any of the offences under the Atrocities Act are made out.

6. Learned APP as well as learned counsel for the respondent No.2 opposed this appeal.

7. I have considered these submissions. Learned APP produced the investigation papers before me. The informant's friend Dattatraya has corroborated the informant's case.

However, the investigation papers does not include the statement of any other witness in respect of the incident. Apart from that there are medical certificates in respect of the informant Dhanaji and his friend Dattatraya.

The informant Dhanaji had suffered following injuries :

- (i) Swelling present over occipital region and both temporal region.
- (ii) Tenderness present over right ear.
- (iii) Multiple contusions present over back.
- (iv) Abrasion present over lower abdomen around 3 x 1 cm.
- (v) Swelling and tenderness present over right forearm.
- (vi) Swelling present over left lateral side of knee.
- (vii) Swelling present below left eye.

The informant's friend Dattatraya had suffered the following injuries :

- (i) Swelling and tenderness present over neck (both medial and lateral aspect)
- (ii) Swelling and tenderness present over back.
- (iii) Swelling present over lateral side of left arm.
- (iv) Swelling and tenderness present over both thighs.

8. Thus, it can be seen that the informant and his friend were brutally assaulted and, therefore, the offence would fall within the meaning of Section 3(2)(va) of the Atrocities Act. The Schedule of the Atrocities Act also includes Section 324 of IPC. Thus, the ingredients of Section 3(2)(va) of the Atrocities Act are clearly made out.

9. The entire narration in the FIR also shows that one of the appellants Sunil Pawar has abused the informant with derogatory reference to his caste. Therefore, these appellants have knowingly committed this offence and, therefore, anticipatory bail cannot be granted to them; except to Bandu @ Narsinh Annappa Sesware because according to learned counsel for the appellants Bandu @ Narsinh Annappa Sesware himself belongs to a Scheduled Caste. Learned counsel has relied on the caste validity certificate of the said appellant which mentions that he belongs to a Scheduled Caste. He can be granted protection.

10. Considering this discussion, the following order is passed :

:: O R D E R ::

- i. The appeal is dismissed as far as the appellant Nos.1, 2, 3 and 5 are concerned.
- ii. Considering that the Diwali festival is around the corner, the interim order granted to the appellant Nos.1, 2, 3 and 5 vide order dated 20.9.2022 is extended upto 31.10.2022.
- iii. The appeal is allowed only in respect of appellant No.4 Bandu @ Narsinh Annappa Sesware.
- iv. In the event of his arrest in connection with C.R. No.272/2022 registered at Umadi police station, District-Sangli, the appellant Bandu @ Narsinh Annappa Sesware is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- v. Criminal Appeal is disposed of accordingly.

(SARANG V. KOTWAL, J.)