

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

CRIMINAL APPEAL NO. 930 OF 2021

1) Dhanaji Bhau Choudhari
2) Mrs. Gulab Narayan Choudhari
3) Mrs. Nira Dhanaji Choudhari

...Appellants

Versus

Sr. Police Inspector
Murbad Police Station,
District- Thane & Ors.

...Respondents

.....
Mr. Charan Penthalia for the Appellants.
Mr. S.S. Pednekar, APP for the Respondent -State.
Ms. Akshata B. Desai, appointed for Respondent No.3.
.....

**CORAM : REVATI MOHITE DERE &
V.G.BISHT, JJ.**

DATE : 13TH JUNE, 2022

P.C.:

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.
3. At the outset, learned Counsel for the appellants submits that he does not press this appeal qua appellant No.1. He submits that during the pendency of this appeal, the appellant No.1 was arrested and subsequently, released on bail. Learned Counsel, however, presses this appeal qua appellant Nos. 2 and 3.

4. By this appeal, the appellant Nos. 2 and 3 seek pre-arrest bail in connection with C.R. No. 286 of 2021, registered with the Murbad Police Station, District - Thane, for the alleged offences punishable under Sections 376 (2) (n), 417, 325, 323, 504 read with 34 of the Indian Penal Code ('I.P.C.') and under Sections 3(1)(r), 3(1)(s), 3(1) (w) (ii) and 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ('SCST Act').

5. Learned Counsel for the appellants submits that the allegations as against appellant Nos. 2 and 3 are false and baseless. He submits that the alleged incident of hurling castiest abuses is alleged to have taken place on 4th July, 2021, whereas, the complaint/ FIR was lodged by the respondent No.3 after almost 24 days i.e. on 28th July, 2021. He further submits that a perusal of the FIR would show that a false complaint has been lodged by the respondent No.3, as the appellant No.2's son Rahul with whom the respondent No.3 was having a love affair for almost seven years, had refused to marry her. He further submits that the allegations of the respondent No.3, are that the appellant No.2's son i.e. Rahul had physical relations with her, after promising marriage. He further submits that appellant Nos.2 and 3 are alleged to have assaulted the complainant with a wooden stick resulting in a fracture of her hand. He further submits that during the course of investigation, co-accused Rahul Choudhari i.e. son of

appellant No.2 was arrested and subsequently, released on bail. He further submits that even otherwise the said incident of hurling casteist abuses has not happened in public view so as to attract the provisions of SC ST Act.

6. Learned APP and learned Counsel for respondent No.3 oppose the appeal.

7. Learned APP and learned Counsel for respondent No.3 are unable to point out any witness in the charge-sheet to show the presence of any other person at the time of alleged abuses .

8. It appears from the perusal of complaint/ FIR that respondent No.3, aged 30 years was in a relationship with the appellant No.2's son from 2013 to 31st December, 2020. According to respondent No.3, on 4th July, 2021 when she went to Rahul's house, the appellant Nos. 2 and 3 assaulted her with a wooden stick and abused her in the name of her caste. It is the respondent No.3's case, that on 27th July, 2021, she learnt that the appellant No.2's son -Rahul was getting married within 8 to 15 days with another girl, pursuant to which, she filed a complaint / FIR as against Rahul, the appellant Nos. 2 and 3 and other co-accused. Respondent No.3 has alleged that Rahul had established physical relations with her on the pretext of marriage and that when she visited Rahul's house, the appellant

Nos. 2 and 3 assaulted and abused her in the name of her caste.

9. The incident is alleged to have taken place on 4th July, 2021, whereas the FIR was lodged on 28th July, 2021 after almost 24 days of the alleged incident. Prima facie, in the peculiar facts, we find that delay in lodging of FIR has not been explained by the respondent No.3. The aforesaid incident of hurling castiest abuses is not stated to be in public view, so as to attract the provisions of the SC ST Act. In the facts, we prima facie, find that the possibility of falsely alleging hurling of castiest abuses by the appellant Nos. 2 and 3 cannot be ruled out.

10. Considering the aforesaid, we are of the opinion that the appellant Nos. 2 and 3 have made out a case for pre-arrest bail and that the bar of Section 18 of the SC ST Act will not apply. Accordingly, the appeal is allowed and the appellant Nos. 2 and 3 are granted pre-arrest bail, on the following terms and conditions :

ORDER

- (i) The appeal is not pressed qua appellant No.1;
- (ii) As far as appellant Nos. 2 and 3 are concerned, in the event of arrest, they be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- each with one or two sureties in the like amount;

(iii) Appellant Nos. 2 and 3 shall attend the concerned police station on the first Saturday of every month between 10.00 a.m. to 11.00 a.m. for a period of six months;

(iv) Appellant Nos. 2 and 3 shall inform their latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

(v) Appellant Nos. 2 and 3 shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) Appellant Nos. 2 and 3 shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court.

11. Rule is made absolute on the aforesaid terms.

12. It is made clear, that the observations made herein are *prima facie*,

for the purpose of deciding this appeal and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

13. The appeal stands disposed of accordingly.

14. All concerned to act on the authenticated copy of this order.

V.G.BISHT, J.

REVATI MOHITE DERE, J.