

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

CRIMINAL APPEAL NO. 1046 OF 2021

1. Navnath Mhasu Pawar
2. Mrs. Gita Navnath Pawar
3. Rushikesh Navnath Pawar
4. Kunal @ Rushiraj Navnath Pawar ... Appellants

Versus

The State of Maharashtra and Anr. ... Respondents

Mr.Akshay Bankapur, for the Appellants.

Mrs. Veera Shinde, APP for the Respondent – State.

Mrs. Manisha Devkar, Appointed Advocate, for Respondent No.2.

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

DATE : 15th JUNE 2022.

ORDER : (PER : V.G.BISHT, J.)

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 This criminal appeal is preferred under Section 14-A of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the SC ST Act”) against the order dated 16/12/2021 below Exh.1 in Criminal Bail Application No. 1633 of 2021 by learned District Judge-2 and Additional Sessions Judge, Nashik, thereby rejecting the application under Section 438 of the Code of Criminal Procedure, 1973 (for short, “the Cr.P.C.”) in connection with C.R. No. 567 of 2021 registered with Police Station Dindori, Nashik for alleged offences punishable under Section 143, 147, 307, 323, 406, 427, 504 and 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(5), 3(2)(va) of the SC ST Act.

4 It is the case of the prosecution that the informant’s husband is working with Police Department and at the relevant time was posted at Panchvati Police Station, Nashik City. The appellant No.1 wanted to purchase a car and as he was not eligible for loan, the husband of informant agreed and car was purchased in his name and accordingly, loan was obtained. The prosecution alleges that the appellant No.1 failed to pay the instalments which led to harassment by the finance company. This also led to confrontation between the

appellants and family members of the informant and it is further alleged that the former damaged the vehicle, tried to burn it somehow and also attempted to burn the respondent No.2.

5 The FIR accordingly came to be registered against the appellants at the instance of informant.

6 Mr. Bankapur, learned Counsel for appellants, apart from narrating the facts submits that the alleged incident took place on 01/05/2020 and FIR for the same is lodged on 08/11/2021 i.e. almost 18 months after the alleged incident and the said inordinate delay is nowhere explained in the FIR. According to learned Counsel, the informant's husband wanted to seize the car in question forcibly and as the appellant No.2 had given the complaint to the Police Commissioner of Nashik, the present complaint keeping a grudge in mind and with malafide intention came to be filed against the appellant. Even otherwise, the complaint does not disclose the commission of offence under SC ST Act and thus keeping in mind this aspect and the material on record, the learned trial Judge had earlier granted the interim protection but later on, on trifle reasons

vacated the interim order of protection and rejected the application. The impugned order is absolutely not sustainable, according to learned Counsel.

7 Mrs. Veera Shinde, learned APP, on the other hand, supported the impugned order and would submit that the prosecution has gathered sufficient evidence to show the involvement of accused in the offence. Moreover, according to learned APP, in the light of Section 18 and 18A of the SC ST Act, the present appellant do not deserve to be given benefit of anticipatory bail.

8 We have gone through the record with the assistance of learned Counsel for appellants as well as learned APP.

9 We have also perused the order of the learned trial Judge (Exh. B) dated 25/11/2021 whereby the interim protection was extended in favour of the appellants mainly on two grounds. Firstly, the learned Additional Sessions Judge was of the opinion that there was delay of 18 months in lodging the FIR and previous N.C. about the incident does not make any allegations with regard to an offence

under the Atrocities Act. Secondly, at that stage, the learned Additional Sessions Judge found that the FIR appeared to be tainted and therefore, the application was not hit by the bar of Section 18 of the Atrocities Act. Further, interestingly after hearing the investigating officer, the learned Additional Sessions Judge, pleased to vacate the interim protection only on the ground that the appellants have made material alterations in the vehicle, had changed the tyres and colour of the vehicle and they also had erased some of the digits on the engine number.

10 In our considered view, that could not be a ground for vacation of the interim protection, particularly when the learned Additional Sessions Judge was of the opinion of non existence of a *prima facie* case and so also absence of bar of Section 18 of the SC ST Act. These two aspects were never discussed by the learned Additional Sessions Judge after hearing the investigating officer and while rejecting the anticipatory bail.

11 Be that as it may, the fact remains that the FIR admittedly came to be filed after huge delay of 18 months. We do not find any

reason much less the plausible reason from the FIR as to the said delay. This aspect becomes more serious when we notice that the informant's husband is none other than a police personnel employed with the Police Department and certainly can be imputed with the knowledge of implication of delay in filing the FIR.

12 It is also apparent from the record and more particularly from Exh. E that an NC was lodged by appellant No.2 against the husband of informant on 16/10/2019, under Sections 504, 506 of the Indian Penal Code . The subject matter of the NC was the vehicle in question and about the indulgence of appellants in criminal intimidation and abuses. It is further seen that a Civil Suit bearing Special Civil Suit No. 485 of 2019 is filed by appellant No.1 against the husband of the informant and others. The subject matter of which is the vehicle in question. Thus, the dispute between the parties is in respect of payment of loan instalment of the car. Needless to say, their relations are strained.

13 Reverting to the case in hand, in the FIR it is vaguely alleged that the appellants-accused gave abuses on their caste in the presence

of people without giving any details thereof.

14 The facts and circumstances of the case, as discussed herein-above, in our view, do not reveal *prima facie* the commission of offence under the provisions of SC ST Act. Therefore, the bar of Section 18 and 18A of the SC ST Act shall not be applicable.

15 In view of above, we pass the following order:-

ORDER

- i) The Appellants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- each, with one local surety in the like amount;
- ii) The Appellants shall attend the concerned police station on every Monday and Friday between 5:00 p.m. to 7:00 p.m.; till the conclusion of the trial;
- iii) The Appellants shall inform their latest place of residence and mobile contact numbers 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;

iv) The Appellants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

v) The Appellants 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;

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

V. G. BISHT, J.

REVATI MOHITE DERE, J.