

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

CRIMINAL APPEAL NO.1057 OF 2021

1. Kalubai Bama Gharat
2. Vikesh Ravindra Gharat
Versus
1. The State of Maharashtra
2. Akash Sanjay Khandgale

...Appellants
...Respondents

Mr. Kuldeep Patil i/b Ms. Saili Naresh Dhuru for the Appellants

Ms. Anamika Malhotra, A.P.P for the Respondent No.1–State

Mr. Sourabh Saxena a/w Ms. Komal Gosavi i/b M/s. J. J. Associates for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 1st MARCH 2022

P.C. :

1 Heard learned counsel for the parties.

2 By this appeal, the appellants seek pre-arrest bail in connection with C.R. No. 373/2021 registered with the Taloja Police Station, Raigad for the offence punishable under Section 326 r/w 34 of the Indian Penal

Code ('IPC') and under Sections 3(1)(r), 3(1)(s), 3(1)(u), 3(1)(c), 3(2), 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ('SC ST Act').

3 Learned counsel for appellants submits that during the course of investigation, the police have dropped Section 326 of the Indian Penal Code from the said C.R, as the injuries were found to be simple in nature and have now applied Section 324 and 341 r/w Section 34 of the Indian Penal Code. Learned counsel for the appellants submits that the appellant No. 1 is the grandmother of accused No. 1-Monish Gharat and appellant No. 2 is the brother of Monish.

4 Learned counsel for the appellants submits that the allegations are essentially as against co-accused-Monish i.e. of assault with a scythe (*koyta*) on complainant/respondent No. 2. He further submits that as far as abuses are concerned, the same are not alleged to have been hurled by the applicants but it was Monish, who hurled casteist abuses at the respondent No. 2.

5 Learned A.P.P does not dispute the fact that as no offence under Section 326 was made out, the same was dropped, having regard to the nature of injuries sustained by the respondent No. 2 and that now Sections 324 and 341 r/w Section 34 of the Indian Penal Code have been applied to the said C.R. Learned A.P.P states that the complainant/respondent No. 2 has sustained injuries, which are simple in nature. Infact, on the last date, learned A.P.P had tendered a xerox copy of the injury certificate of the complainant, which was taken on record.

6 Learned counsel for the respondent No. 2 opposes the application. He submits that the respondent No. 2 is a 18 year old boy and he apprehends danger to his life from the appellants.

7 Perused the papers. Vide order dated 3rd January 2022, this Court had granted interim protection to the appellants, by a detailed order. A perusal of the FIR shows that the allegations as against the appellants are that they held the complainant/respondent No.2. As far as allegations of assault with *koyta* are concerned, the same are alleged as against Monish.

Similarly, allegations of casteist abuses at the respondent No.2 are also alleged as against Monish. As noted aforesaid, initially, Section 326 was applied to the said FIR, however, the same was subsequently dropped, having regard to the injuries. As far as the appellants are concerned, they are not alleged to have assaulted the respondent No.2, nor are they alleged to have hurled casteist abuses as against the respondent No.2.

8 Considering the aforesaid, the interim relief granted by this Court vide order dated 3rd January 2022, stands confirmed on the following terms and conditions :

ORDER

- (i) In the event of the arrest, the appellants be enlarged on bail on executing P.R. Bond in the sum of Rs.10,000/- each, with one or two sureties in the like amount;

- (ii) The appellants shall report to the Investigating Officer of the concerned Police Station on the first Saturday of every month, for a period of 12 months from today;

(iii) The appellants shall not contact the respondent No. 2 or threaten / attempt to influence / intimidate the respondent No.2 or any person concerned with the case;

(iv) The appellants shall inform their latest places of residence and mobile contact numbers and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The appellants to cooperate with the investigating agency and later, the trial Court, in the conduct of the trial.

9 The Appeal is allowed and is accordingly disposed of in the aforesaid terms.

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

REVATI MOHITE DERE, J.