

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 93 OF 2022
WITH
CRIMINAL APPEAL NO. 103 OF 2022

CRI.APPEAL NO.93/2022

1. Sheikh Adil Sheikh Chand @ Adil Jamadar,
Aged about 62 years, Occ.: Agriculturist,
2. Yasin Shah Musa Shah,
Aged about 58 years, Occ. : Agriculturist,
3. Sheikh Ajiz Sheikh Shiledar,
Aged about 49 years, Occ. : Agriculturist,
4. Sheikh Salim Khan Afzal Khan,
Aged about 62 years, Occ.: Agriculturist,

All above R/o. Kothali, Tahsil : Motala,
District: Buldhana.

.... APPELLANTS.

// VERSUS //

1. State of Maharashtra,
through its Police Station,
Borkhedi, Tahsil : Motala,
District : Buldana.
2. Shantabai Bhimrao Durender,
Aged about 48 years, Occ: Agriculturist,
R/o. Kothali, Tahsil : Motala,
District: Buldhana.

.... RESPONDENTS.

AND

CRI.APPEAL NO.103/2022

1. Lukmanshan Usmanshan
Aged about 35 years, Occ.: Labour,
2. Sk. Akram Sk. Hasan,
Aged about 35 years, Occ. : Agriculturist,
3. Nasim Khan Ismailkhan,
Aged about 47 years, Occ. : Agriculturist,
4. Hanifkhan Bilankhan,
Aged about 46 years, Occ.: Agriculturist,

All above R/o. Kothali, Tahsil : Motala,
District: Buldhana.

.... **APPELLANTS.**

// **VERSUS** //

1. State of Maharashtra,
through its Police Station,
Borkhedi, Tahsil : Motala,
District : Buldana.
2. Shantabai Bhimrao Durender,
Aged about : Major, Occ: Agriculturist,
R/o. Kothali, Tahsil : Motala,
District: Buldhana.

.... **RESPONDENTS.**

Shri Ashish Chaware, Advocate for Appellants.
Shri S.D.Sirpurkar, A.P.P. for Respondent No.1/State.
None for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 30, 2022.

ORAL JUDGMENT :

1. Heard learned counsel for the appellants and the learned A.P.P. for the respondent No.1/ State. None for the respondent No.2, though served.

2. **ADMIT.**

3. Both these appeals are arising out of Crime No.320 of 2021, registered with Police Station, Borkhedi, Tahuka : Motala, District : Buldana, for the offences punishable under Sections 143, 147, 149, 323, 504, 506, 188, 269 of the Indian Penal Code, Section 51(b) of the Disaster Management Act, 2005 and under Sections 3(1)(r), 3(1)(s), and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act”), on rejection of the bail application by the learned Sessions Judge.

4. The learned counsel for the appellants submits that the dispute arose out of the proceedings filed for right of way before the Tahsildar and during the time when the concerned Circle Officer, Talathi, along with Police machinery of Police Station, Borkhedi started to remove the obstruction made by the complainant. It is submitted that the

appellants have been falsely implicated in the serious offence like the offences under the Atrocities Act though they never humiliated or insulted the complainant or abused the complainant on caste. It is submitted that the concerned officers, including the police officers, were present at the spot when the alleged incident took place. He, therefore, prays that the order rejecting application for anticipatory bail by the learned Sessions Judge may be quashed and set aside and the present appeal be allowed by confirming the orders granting *ad-interim* anticipatory bail to the appellants.

5. It is submitted that as far as other offences, other than the offences under the Atrocities Act are concerned, custody of the appellants is not necessary. Moreover, the appellants have been attending the Police Station, as directed by this Court while granting *ad-interim* anticipatory bail by order dated 17th February 2022.

6. On the other hand, the learned A.P.P. strongly opposed the applications and submits that there is sufficient incriminating material on record to show the involvement of the appellants in the alleged offence.

7. On perusal of the case diary and the contents of the F.I.R., it reveals that the Investigating Officer has recorded statements of the witnesses who were present at the time of removal of encroachment over the access way of the appellants. After going through the statements of the witnesses, who are independent witnesses, *prima-facie* it appears that they do not corroborate the case of the prosecution in relation to the allegations under the Atrocities Act. Thus, *prima-facie* no incriminating material is available on record to show that the provisions of the Atrocities Act would attract in this case.

8. In that view of the matter, the bar under Section 18 of the Atrocities Act would not come in the way of the appellants to consider their case for grant of pre-arrest bail.

9. As far as other offences are concerned, the appellants have been attending the Police Station as per the directions of this Court and there is no complaint about the abuse of concession by the appellants. Moreover, the custodial interrogation is not necessary in this matter.

10. In that view of the matter, I am of the opinion that the appellants are entitled for grant of pre-arrest bail. Accordingly, I pass the following order:

- i) Both the Criminal Appeals are allowed.
- ii) The order dated 28/01/2022 passed in Anticipatory Bail Application No.17 of 2022 and order dated 11/02/2022 passed in Anticipatory Bail Application No.35 of 2022 below Exh.1 by the learned Designated Judge, Malkapur, are quashed and set aside.
- iii) The orders passed by this Court on 17/02/2022 & 23/02/2022, granting ad-interim anticipatory bail to the appellants, is hereby confirmed with modification that the appellants shall attend the concerned Police Station as and when their presence is required.

The both the Criminal Appeals stand **disposed of** accordingly.

JUDGE

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