

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

CRIMINAL APPEAL NO. 184 OF 2022

- APPELLANTS:**
1. Shubham Ganeshrao Bodakhe,
Aged 26 years, Occu: Business.
 2. Sudhir Himmatrao Gangane,
Aged 47 years, Occu: Agriculturist.
Both R/o Wadali Deshmukh,
Tq. Akot, Dist. Akola.

..V E R S U S..

- RESPONDENTS**
1. The State of Maharashtra,
through Police Station Officer,
Akot (Rural), Tq. Akot Dist. Akola.
 2. Anushri Uddhavrao Wahurwagh
Aged 27 years, Occu: Private Service,
R/o Wadali Deshmukh, Tq. Akot,
District - Akola.

Shri R.L.Khapre, Senior Counsel a/b Shri D.R. Khapre, Counsel for the
appellants.

Mrs S.S. Jachak, APP for the State./ Respondent No.1.

Shri S.S. Dhangale, counsel for respondent No.2.

CORAM : ANIL S. KILOR, J.

DATE : 04/05/2022

ORAL JUDGMENT :

1. Heard Shri R.L. Khapre, learned Senior Counsel assisted
by Shri D.R.Khapre, counsel for the appellants, Mrs S.S.Jachak,
learned APP for the Respondent No.1 and Shri S.S.Dhangale,

counsel for the respondent No.2.

2. **ADMIT**

3. The present appeal is arising out of rejection of pre-arrest bail of the appellants vide order below Exhibit No.1, dated 22/03/2022, passed by the learned Additional Sessions Judge, Akot in Crime No. 115/2022, dated 09/03/2022, registered with the Police Station (Rural), Tq. Akot, Dist. Akola, for the offences punishable under Sections 279, 337, 323, 354, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r)(s), 3(1)(w)(i), 3(2)(va) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act').

4. Shri R.L.Khapare, learned Senior Counsel submits that the story of the prosecution is highly improbable as in the complaint, it is stated that when the alleged incident took place, the complainant was going for collecting Aadhar Card of her Son at 8.45 p.m. in the night.

5. He submits that the appellants have been falsely implicated in the alleged offence, out of a political rivalry.

6. Learned APP opposes the present appeal and prays for rejection of the appeal.

7. Shri Dhengale, learned counsel for the respondent No.2/ complainant strongly opposes the appeal. He submits that there are criminal antecedents to the discredit of the appellants and they are in habit of threatening the villagers. He has drawn attention to the chart given at the end of page No.42, para-4 of the submission of respondent No.2. He submits that earlier also, an offence was registered against the appellants under the Atrocities Act.

8. Learned counsel has further drawn attention of this Court to the FIR No. 116/2022, registered subsequent to the FIR lodged by the complainant, at the behest of one *Sulochana Ashok Wahurwagh*, who according to the learned counsel for the respondent No.2, is an employee with the father of the appellant No.2. He submits that this report is an example of how the appellants are pressurizing the complainant not to depose against them. He, therefore, submits that if the appellants are released on bail, it is not possible to conduct a fair trial.

9. He lastly submits that there is an eye witness to the incident namely *Nilesh Rambhau Kale* and as there is incriminating material available on record to show the involvement of the appellants in the alleged offence and as the offence registered under the Atrocities Act, the bar under Section 18 would apply in this case.

10. To consider the rival contentions of the parties, I have

perused the case diary and also the contents of the FIR.

11. On perusal of the case diary and particularly, the statements of the eye-witness, whose name is referred in the complaint, namely Nilesh Rambhau Kale, *prima facie* he does not corroborate the story of the prosecution, as regards the allegation under the Atrocities Act. There is no any other eye-witness to the incident.

12. Thus, in absence of any *prima-facie*, incriminating material showing involvement of the appellants particularly, in respect of the offence registered under the Atrocities Act, I have no hesitation to hold that in this case, the bar under Section 18 would not come in the way of the appellants.

13. As far as the injury report of the complainant is concerned, from the allegations made in the FIR itself, it can be seen that *prima facie* it appears to be not intentional but might have happened accidentally.

14. The complainant herself in her statement has stated that there is no rivalry between her and the accused persons. The said statements, *prima-facie*, shows that it was an accidental and not the intentional act on behalf of the accused persons.

15. In that view of the matter, as in this case, custodial interrogation is not necessary, I am of the opinion that the present appeal needs to be allowed and the ad-interim bail granted to the appellants needs to be confirmed with certain conditions. Accordingly, I pass the following order:

- a] The Criminal Appeal is **allowed**.
- b] The order dated 22/03/2022, passed by the Additional Sessions Judge, Akot in Misc. Criminal Application No.59/2022, is hereby quashed and set aside.
- c] The order granting ad-interim bail dated 30/03/2022, is hereby confirmed.
- d] The appellants shall attend the concerned Police Station on 11th, 12th and 13th of May, 2022, between 9.00 a.m. to 12.00 noon, and thereafter as and when their presence is required.
- e] The appellants shall not tamper with the prosecution witnesses.
- f] The appellants shall not leave the

jurisdiction of the concerned Police Station
without prior permission of the Court.

g] Liberty is granted to the respondent No.2
and the State to apply for cancellation of
bail, in case the appellants repeat the similar
offence.

The Criminal Appeal stands **disposed of**
accordingly.

JUDGE

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