

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

CRIMINAL APPEAL NO.426 OF 2022

1. Mr. Sandip S/o Somaji Tale,
Aged about 35 years, Occupation:
Agriculturist, resident of Village
Rongha, Tahsil Tumsar, District
Bhandara (Accused no.1 in FIR)
 2. Mr. Umesh S/o Bhaskar Patil,
Aged about 48 years, Occupation:
Agriculturist, resident of Village
Andhalgao, Tahsil Tumsar, District
Bhandara (Accused no.2 in FIR)
 3. Mr. Chandrashekhar @ Nandu S/o
Natthuram Rahangdale,
Aged about 36 years, Occupation:
Agriculturist, resident of Yerli, Tahsil
Tumsar, District Bhandara. (Accused
no.3 in FIR)
- Appellants

// VERSUS //

1. State of Maharashtra,
Through it Police Station Officer, Police
Station Bhandara, Bhandara,
Maharashtra.
 2. Mrs. Maheshwari W/o Hemraj Neware,
Aged about 43 years, Occupation: not
known, resident of Vihirgaon/Burandya,
Post Sangadi, Taluka Sakoli, District
Bhandara. (Complainant)
 3. Priyank S/o Moreshwar Borkar,
Aged 32 years, Occupation: Farmer,
resident of Ward no.10, Lakhandur,
District Bhandara.
- ... Respondents

Shri P.A. Abhyankar, Advocate for the appellant.
Shri V.A. Thakare, A.P.P. for the respondent No.1/State.
Shri Rajnish Vyas, Advocate for the respondent No.2.
Shri R.R. Chhabra, Advocate for the respondent No.3.

CORAM : ANIL S. KILOR, J.
DATED : 06 DECEMBER, 2022.

ORAL JUDGMENT

1. Heard Shri P.A. Abhyankar, learned counsel for the appellant, Shri V.A. Thakare, learned APP for the respondent No.1/State, Shri Rajnish Vyas, learned counsel for the respondent No.2 and Shri R.R. Chhabra, learned counsel for the respondent No.3.

2. **ADMIT.**

3. This is an appeal arising out of the order dated 04.07.2022 passed by the learned Additional Sessions Judge, Bhandara in Misc.Cri.Appln.(Bail) No.119/2022, rejecting the pre-arrest bail application of the appellants.

4. It is the case of the prosecution that, on the date of the incidence the election of President and Vice President of Zilla Parishad, Bhandara was scheduled and the election procedure was going on. It is alleged that, on the point of whip there was altercations between the parties, some of the members become aggressive and started assaulting to

the members of opposition party. During the chaotic situation the members of the opposition party outraged the modesty of the complainant and also abused the member namely Priyank Borker on his caste. The complainant and one Vanita Doye were tried to pacify the quarrel at that time the accused persons outraged the modesty of the complainant and they tried to touch the chest of the complainant and by pulling her blouse they tried to manhandle her. In this scuffle the chain of the complainant was also snatched. It is also alleged that, the accused persons abused the complainant on her caste in filthy language.

5. The learned counsel for the appellants submits that there are two political groups and in a meeting of Zilla Parishad there was a clash between both the groups and counter complaints were filed by both the groups against each others.

6. He submits that the appellants have been falsely implicated in the alleged offence. It is submitted that there are no allegations which would *prima facie* attract the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as “the Atrocities Act”), hence, bar under Section 18 of the Atrocities Act would not attract.

7. On the other hand, Shri Vyas, learned counsel for the respondent No.2 and Shri Chhabra, learned counsel for the respondent No.3 submit that as the *prima facie* case is made out, the bar under Section 18 of the Atrocities Act would come in the way of the appellants. It is further submitted that this Court cannot be made detailed enquiry at this stage.

8. On the other hand, Shri Thakare, learned APP opposes the present application and prays for rejection of the present application.

9. In the light of the rival contention, I have perused the case diary.

10. In this case, CCTV footage panchnama is available in the case diary which does not support the case of the prosecution as regard snatching of chain of the complainant or any assault to her. Moreover, as far as the allegations attracting on provisions of Atrocities Act are concerned, it is alleged that following words were uttered by the accused.

“साल्या मादरचोद महा—या, धेड्या” जातीच्या भरवश्यावर निवडुन आलास असे जातीवाचक शिवीगाळ केली.

11. However, it is highly improbable that all the appellants at the same time uttered the words in chorus and thereby abused the respondent No.3 on his caste.

12. Thus, considering the nature of allegations and the CCTV footage panchnama coupled with the statement of Collector who was present at the spot, *prima facie* it appears that the counter FIRs are the outcome of the political rivalry.

13. In the circumstances, since there is no *prima facie* case which would attract the provisions of the Atrocities Act, I am of the opinion that bar under Section 18 of the Atrocities Act will not come in the way of the appellants.

14. I have already observed that in the CCTV footage panchnama there is a specific observation that nothing was noticed regarding snatching of chain or assault to the informant.

15. Further there are some statements of witnesses which supports the case of the prosecution whereas, some witnesses they do not support the case of the prosecution which creates doubt about the veracity of the case of the prosecution.

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

- a) The appeal is **allowed**.

- b) Order dated 04.07.2022 passed by the learned Special Judge, Darwha in Misc.Cri.Appln. (bail) No.119 of 2022 is hereby quashed and set aside.
- c) It is directed that in the event of arrest of the appellants in Crime No.208 of 2022, registered with Police Station: Bhandara, District: Bhandara, for the offences punishable under Sections 354-A, 354(A), 294, 323 of the Indian Penal Code and Sections 3(1)(r)(s), 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, the appellants shall be released on bail on furnishing P.R. Bond of Rs.25,000/-each with one solvent surety in the like amount for each of the applicants.

The appeal is **disposed of** accordingly.

ANIL S. KILOR, J.]