

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

CRIMINAL APPEAL NO.441 OF 2020

1. Shubham Gajanan Devale,
Aged 22 years, Occ. Education,
2. Pavan Gajanan Devale,
Aged 22 years, Occ. Education,
Both R/o Nagartas, Tq. Malegaon,
Dist. Washim.

... Appellants

// VERSUS //

1. The State of Maharashtra,
Through P.S.O. Malegaon, Tq. Malegaon,
District Washim.
2. Chandu S/o Uttam Jadhao,
Aged Adult, R/o Nagartas, Tq. Malegaon,
Dist. Washim

Amendment as per Court's
order dtd.03.12.2020.

... Respondents

Shri A.P. Tathod, Advocate for Appellants.
Shri V.A. Thakare, A.P.P. for the Respondent No.1/State.
None for the respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : 28th MARCH, 2022.

ORAL JUDGMENT

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

2. **ADMIT.**

3. The appellants are seeking pre-arrest bail in Crime No.304 of 2020, dated 20.06.2020, registered with Police Station Malegaon, District Washim, for the offences punishable under Sections 307, 294, 143, 147, 148 and 149 of the Indian Penal Code and Sections 3(i)(r), 3(i)(s), 3(ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Atrocities Act"). The allegations are that the accused persons assaulted the complainant and abused him on his caste.

4. The application filed by the appellants in above referred crime, for grant of anticipatory bail came to be rejected vide order dated 15.07.2020, passed by the learned Additional Sessions Judge, Washim in M.C.A. No.212 of 2020. The said order dated 15.07.2020 is challenged in the present appeal.

5. The learned counsel for the appellants submits that there are counter FIRs and the present FIR is a counter blast of the FIR No.303 lodged on 20.06.2020 by one Mahadeo Rayaba Khadse. It is submitted

that there are two groups and as the appellants are the members of opponent group of the complainant, the present FIR came to be lodged.

6. It is submitted that there is no *prima facie* material available to show that the appellants have abused the complainant on his caste. He would submit that the charge-sheet against the accused, who were arrested, has been filed and even after going through the Injury Report, it can be seen that the injuries are simple in nature.

7. It is submitted that the said Injury Report does not corroborate the allegations which would attract Section 307 of the Indian Penal Code. He therefore, submits that as there is no *prima facie* evidence available on record to show that the appellants have abused the accused on his caste, the bar under Section 18 will not come in the way of the appellants.

8. It is further submitted that as regards, the other provisions also there is no incriminating material available. Accordingly, he prays for confirmation of *ad-interim* anticipatory bail granted to the appellants vide order dated 24.07.2020.

9. On the other hand, Shri Thakare, learned APP strongly opposes the appeal and submits that there is sufficient material available on record to show the involvement of the present appellants. He states that the witnesses are specifically stated the name of the appellants and as the sufficient material is there to show the involvement of the appellants in the offence as alleged, the bar would come in the way of the appellants under Section 18 of the Atrocities Act, for grant of anticipatory bail.

10. I have perused the charge-sheet and also the contents of the FIR.

11. It is alleged that the appellants and other accused persons assaulted the complainant by Iron Pipe on head, back and on hand. The Injury Report, *prima facie* does not corroborate the allegations made in the FIR about assault. Thus, there is no *prima facie* material available on record to show that Section 307 would attract in this case.

12. Moreover, there is no independent witness to *prima facie* show that the appellants have abused the complainant on his caste, though the incident took place in public view and public place.

13. As there is no *prima facie* incriminating material available against the appellants to show any involvement of appellants in the alleged offence attracting the provisions of the Atrocities Act, the bar under Section 18 would not come in the way of the appellants.

14. Furthermore, as observed herein above, that the Injury Report does not corroborate the case of the prosecution to attract Section 307, I am of the opinion that this is a fit case to confirm the *ad-interim* anticipatory bail granted by this Court vide order dated 24.07.2020 by allowing the present appeal. Accordingly, I pass the following order:

- a) The Criminal Appeal is **allowed**.
- b) The order dated 15.07.2020, passed below Exh.1, by the learned Additional Sessions Judge, Washim in M.C.A. No.212 of 2020, is quashed and set aside.
- c) The order passed by this Court on 24.07.2020, granting *ad-interim* anticipatory bail, is confirmed.
- d) The appellants shall attend the concerned Police Station as and when their presence are required.

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