

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

CRIMINAL APPEAL NO.377 OF 2021

1. Namdev S/o Ramlal Sahare,
Aged about 51 years, Occ. Agriculturist,
2. Hansraj S/o Ganeshlala Lilhare,
Aged about 44 years, Occ. Agriculturist,

Both R/o Village Dhakni, Tah. & Dist.
Gondia. Appellants

// VERSUS //

1. State of Maharashtra,
Through P.S.O. Gondia City.
2. Sandesh S/o Madhukar Khobragade,
Aged 38 years, Occ. Agriculture Labour,
R/o Ambedkar Chouk, Kudwa Near
Deshbhartar's house, Ward No.3,
Gondia, Dist. Gondia.
Presently in Jail at District Prison,
Bhandara, Dist. Bhandara. ... Respondents

Shri M.V. Rai, Advocate for the appellants.

Ms S.S. Jachak, A.P.P. for the respondent No.1/State.

Ms Sonali Saware, Advocate for the respondent No.2 (Appointed).

CORAM : ANIL S. KILOR, J.

DATED : 26 APRIL, 2022.

ORAL JUDGMENT

1. Heard Shri M.V. Rai, learned counsel for the appellants,
Ms S.S. Jachak, learned APP for the respondent No.1/State and Ms Sonali
Saware, learned counsel for the respondent No.2 (Appointed).

2. **ADMIT.**

3. This is an appeal arising out of the order below Exh.01, dated 08.09.2021 passed by the learned District Judge-1 and ASJ, Gondia in Misc. Cri. Bail Application No.217/2021, rejecting the pre-arrest bail application for the appellants.

4. Shri Rai, learned counsel for the appellants submits that the appellants have been falsely implicated in the alleged offence and the offence was registered as a counterblast of a complaint lodged by the father of the minor girl in Crime No.69 of 2021, dated 27.02.2021 against the complainant, for the offences punishable under Sections 376(2)(J) and 376 (2)(I) of the Indian Penal Code.

5. Shri Rai, learned counsel for the appellants further submits that there is a delay of about 17 days in lodging the First Information Report (FIR) and no explanation has been offered. Whereas, the allegations in the FIR lodged on 27.02.2021 are very serious and in the said FIRs even the cause of injury on the person of the complainant is stated. Accordingly, he submits that as there is no *prima facie* incriminating

material to show the involvement of the appellants in the alleged offence, even bar under Section 18 would not come in the way of the appellants.

6. On the other hand, Ms Jachak, learned APP has made available both the Case Diaries i.e. Case Diary in Crime No.122 of 2021 and Case Diary of counterblast FIR i.e. Crime No. 69 of 2021. Learned APP opposes the present appeal.

7. Ms. Saware, learned counsel for the respondent No.2 opposes the present appeal and submits that as the offence is registered under the Atrocities Act, there is a bar under Section 18 of the Atrocities Act, to entertain the application for pre-arrest bail.

8. To consider the rival contentions of the parties, I have perused the Case Diary and also the contents of the FIR.

9. From the FIR, in this case, it is clear that there is a delay of about 17 days in lodging the FIR. There is an Injury Report dated 26.02.2021 i.e. the date of occurrence. In the Case Diary, the statement of minor girl, a victim in Crime No.69 of 2021 is there, which was recorded

on 04.03.2021 i.e. much prior to the lodgment of the FIR by the complainant.

10. In the statement of the victim minor girl, the cause of injury on the person of complainant is also mentioned.

11. Thus, the injury on the person of the complainant creates doubt whether those injuries were caused because of the present appellants as alleged in the present crime or those were caused because of the cause shown in the statement of the victim minor girl in Crime No.69 of 2021.

12. Moreover, delay in lodging the FIR also creates a doubt about veracity of the allegations made in the FIR, including the allegations attracting the provisions of the Atrocities Act.

13. In that view of the matter, as no *prima facie* incriminating material is available on record to show the involvement of the appellants in the alleged offence, bar under Section 18 would not come in the way of appellants in this case.

14. Moreover, in view of the findings recorded above, as there is no *prima facie* incriminating material available against the appellants, I pass the following order:

- a) The criminal application is **allowed**.
- b) Order dated 08.09.2021 passed by the learned District Judge-1 and ASJ, Gondia is hereby quashed and set aside.
- c) Order passed by this Court on 17.09.2021, granting *ad-interim* anticipatory bail, is confirmed with modification that the appellants shall attend the concerned Police Station as and when their presence is required.
- d) Ms Sonali Saware, learned counsel for the respondent No.2 (Appointed) is entitled to receive his professional charges from the High Court Legal Services Sub-Committee, Nagpur, which I quantify Rs.2,500/-.

The criminal application is **disposed of** accordingly.