

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

CRIMINAL APPEAL NO.573 OF 2022

1] Shivaji Shankar Dhon,
Aged about 36 years,
Occupation-Labour.

2] Supesh @ Parsu Gajanan Gaigol,
Aged about 22 years,
Occupation-Labour,

Both R/o.Chondi Takleshwar,
Tah. Sangrampur, Distt. Buldhana. .. Appellants
(Original applicants)

.. Versus ..

1] State of Maharashtra, through
Police Station Officer, Tamgaon,
Police Station, Sangrampur,
Tahsil-Sangrampur, Distt. Buldana.

2] Supada s/o Ramesh Bodade,
Aged about 39 years,
Occupation-Nil,
R/o. Chondi Takleshwar,
Sangrampur, Distt. Buldana. .. Respondents

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Shri S.A. Mohta, Advocate for the appellants,
Shri A.M. Kadukar, APP for respondent no.1-State,
Mrs. Seema P. Dhotre, Advocate (Appointed) for respondent
no.2.

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CORAM : SMT. M.S. JAWALKAR, J.
DATED : 27.09.2022.

ORAL JUDGMENT

1. The present appeal is filed by the appellants-applicants under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the said Act'). The appeal is preferred challenging the order passed by the learned Additional Sessions Judge, Khamgaon, District-Buldhana below Exh.1 in Anticipatory Bail Application No.404/2022 rejecting their application. It is submitted that the complainant-respondent no.2 lodged a complaint with the respondent no.1 for the offences punishable under Sections 3 (1)(r)(s), 3 (2) (va) of the said Act and Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code.

2. Learned Advocate for the appellants-applicants placed on record First Information Report – Crime No.227/2022 dated 07.08.2022 on record. It is alleged that the complainant and

the applicants are permanent resident of Chondi Talkeshwar. The complainant belongs to 'Matang' community and the applicants are 'Kunbi' community. On 02.08.2022, the brother of the complainant namely Bhagwat, applicants Milind Ghawande, Parmeshwar Kurade were gathered on the back side of anganwadi. At that time, applicant no.1 humiliated him by abusing them on their caste. It is also alleged that on 02.08.2022, in front of Vinod Bharsakle, applicant no.1 with wooden rod beat the Bhagwat and both the accused abused him on the caste and humiliated him. The complaint is lodged by the complainant after five days of alleged incident i.e. on 07.08.2022. It is submitted that a concocted story has been prepared so as to falsely implicate the applicants in the alleged crime. The offences, which alleged to have committed, are non-bailable offences and thus the applicants were having apprehension of their arrest. In view thereof, they filed application for grant of anticipatory bail before the learned Sessions Judge, Khamgaon bearing Anticipatory Bail Application No.404/2022. The learned Sessions Judge rejected the said application, only on the ground of bar under Section 18 of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The learned Additional Public Prosecutor for respondent no.1-State, so also learned Advocate for respondent no.2-complainant filed their replies. The appeal is vehemently opposed by the learned Additional Public Prosecutor for the respondent no.1-State as well as the learned counsel for respondent no.2.

4. I have gone through the application, the order passed by the learned Additional Sessions Judge, Khamgaon, a reply of State and also perused the case diary. *Prima facie*, from the statements recorded, all the witnesses, except the complainant and his relatives, none of the witness stated anything that attracting the offences under provisions of the said Act. It also needs to be noted that alleged First Information Report is lodged after five days of the incident. From the reply of the State before the learned Sessions Court, it appears that the wooden rod of bullock cart by which it is alleged that victim

was assaulted is already seized. As per submission of Investigating Officer before the learned Sessions Court, while opposing application for anticipatory bail that first incident is of 29.07.2022 and second incident is of 02.08.2022. The said submission of Investigating Officer is dated 18.08.2022. It is also one of the ground raised by the prosecution to reject the application that there is 'Pola and Ganeshtosav' and if they would be released on anticipatory bail, there would be possibility of quarrel between the complainant and the accused. The said reason now no more surviving. Thereafter, one month has elapsed and both the festivals are over. I have perused the case diary. In view of the statements of the witnesses, I am satisfied that *prima facie* the alleged sections of said Act would not attract. The apprehension of State can be taken care of by imposing stringent conditions. As such, I am inclined to allow the appeal and pass the following order :

ORDER

- (i) The Appeal is allowed.
- (ii) The order passed by the learned Additional Sessions Judge, Khamgaon, District - Buldhana in Anticipatory Bail Application (ABA) No.404/2022, dated 24/08/2022 is hereby

quashed and set aside.

(iii) In the event of arrest, the applicant no.1 Shivaji Shankar Dhon and applicant no.2 Supesh @ Parsu Gajanan Gaigol in connection with Crime No.227/2022 dated 07/08/2022 be released on bail on their furnishing P.R. Bond in the sum of Rs.25,000/- each and one surety in the like amount before the learned Additional Sessions Judge, Khamgaon, District-Buldhana.

(iv) The applicants shall attend the concerned Police Station as and when called by the Investigating Officer, till filing of the charge-sheet.

(v) The applicants shall not tamper with the prosecution evidence.

(vi) The applicants shall not indulge in any criminal activity.

(vii) Appeal stands disposed of accordingly.

(viii) Fees of the learned counsel appointed for respondent no.2, through legal aid, be paid as per the rules.

(SMT. M.S. JAWALKAR, J.)