

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 237 OF 2022

1. Prayagbai Sakharam Gitte

2. Balaji Sakharam Gitte

.. Appellants

Versus

The State of Maharashtra and another

.. Respondents

Mr. Sudarshan J. Salunke, Advocate for the Appellants.

Mr. P. N. Kutti, APP for Respondent No. 1.

Smt. Uma Bhosale, Advocate for Respondent No. 2.

WITH

CRIMINAL APPEAL NO. 236 OF 2022

Balbhim Bansi Gitte

.. Appellant

Versus

The State of Maharashtra and another

.. Respondents

Mr. Sudarshan J. Salunke, Advocate for the Appellant.

Mr. P. N. Kutti, APP for Respondent No. 1.

Smt. Uma Bhosale, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 13th APRIL, 2023.

P. C. :-

. Heard learned advocate for the appellants, learned A.P.P. and
learned advocate for respondent No. 2.

2. These are the appeals seeking bail in the event of arrest of the appellants in connection with the offences registered with Dharur Police Station bearing FIR No. 55/2021 dated 18.03.2021 for the offences punishable under Sections 363, 143, 147, 149, 323, 504 and 506 of the Indian Penal Code (for short "I.P.C.") and also for the offences punishable under Sections 3 (1) (r), 3 (1) (s) and 3 (2) (va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short "Atrocities Act"). The allegations are that, the informant who is reported now to be dead did not find his daughter in the house and therefore, he started searching her. On suspicion, in the night at 11.30 p.m. Balaji – appellant No. 2 in Criminal Appeal No. 237/2022 had been to the house of the informant and on asking him he went away from there. Thereafter informant and his mother had been to the house of one Uttam Janardhan Gitte where the accused persons were present. The informant asked where is the motorcycle of Sakharam. On that, he told that motorcycle was taken by one Rameshwar. On asking where Rameshwar has gone, they did not answer to the said question. The informant told him that his daughter is not found in the house. On that, it is alleged that, Sakharam abused in the name of caste. Further allegation is that, appellant No. 1 in Criminal Appeal No. 237/2022 i.e. Prayagbai asked mother of the informant as to how she came in her house and abused her in the name of caste. The

allegations against Balbhim and Balaji are common that they abused in the name of caste and also assaulted mother of the informant. It is further alleged that, his daughter namely Asmita aged seventeen and half years was taken by Rameshwar @ Guddya under threat and when he went to make an enquiry, he and his mother were insulted in the name of caste. Apprehending arrest, the appellants filed bail application in the Special Court, however, their bail application came to be rejected. The main accused Sakharam was arrested and is now released on bail. On this background, the appellants have approached this Court seeking bail.

3. Learned advocate for the appellants at the outset submitted that, Rameshwar and daughter of the informant namely Asmita have now got married after Asmita attained 18 years of age. Thus, this was clearly a case of eloping the daughter of the informant. There is no question of abusing in the name of caste. The incident is concocted and because of the fact that the daughter of the informant left house with Rameshwar and because of affair between them is not liked by him. He further submits that, the main accused is already released on bail. As against Balbhim and Balaji the allegations are general in nature. Though allegation are there against Prayagbai, it is clearly seen from the FIR that Prayagbai has abused in the name of caste by asking

as to how the mother of the informant came in her house suggests that the incident alleged has taken place in the house and not in public view.

4. Learned A.P.P. opposes the appeals saying that, there are clear allegations made against all the appellants. Though charge-sheet is filed, in view of Section 18 of the Atrocities Act, the prayer of anticipatory bail cannot be entertained.

5. Learned advocate appointed for respondent No. 2 also opposes the appeals. She submits that, in spite of her attempts there is no response from the informant's wife as now informant is dead. She submits that, since the allegations are made in view of Section 18 of the Atrocities Act, prayer for anticipatory bail need not be considered.

6. Considering the submissions and material on record, it is found that, even from the police report now it is seen that, daughter of the informant has now married with the accused Rameshwar clearly suggests that there was affair between them. Further facts needs to be seen that, even from the FIR it is clear that, there is nothing to indicate that the incident has taken place within public place. Against Balbhim and Balaji the allegations are general in nature and there is no specific

allegation making out case against them under the Atrocities Act.

7. Learned advocate for the appellants placed reliance on the judgment delivered in **Criminal Appeal No. 182/2022** by this Court at Nagpur Bench dated 02.05.2022. In the said case, this Court considered the judgment in the case of **Swaran Singh Vs. State** reported in **2009 (2) Mh.L.J. 28** holding that, the offence must take place within public view.

8. Thus, this Court finds that, in view of the above position the appeals needs to be allowed. Hence, the following order.

9. The Criminal appeals are allowed.

10. The order passed by the learned Additional Sessions Judge, Majalgaon in Criminal Bail Application No. 58/2022 dated 25.02.2022 which is impugned in both the appeals is quashed and set aside.

11. In the event of arrest of the appellants in connection with FIR No. 55/2021 dated 18.03.2021 registered with Dharur Police Station for the offences punishable under Sections 363, 143, 147, 149, 323, 504 and 506 of the I.P.C. and also for the offences punishable under Sections 3 (1) (r), 3 (1) (s) and 3 (2) (va) of the Atrocities Act, the appellants shall be released on bail on executing P.R. bond and

furnishing solvent surety in the sum of Rs. 15,000/- (Rs. Fifteen Thousand only) each.

12. The appellants shall attend the police station as and when called by the Investigating Officer. The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence.

13. The criminal appeals stand disposed off.

14. Learned advocate for respondent No. 2/informant is appointed through legal aid. Looking to the efforts and looking to the number of dates she has attended, her fees is quantified to Rs. 7,500/- in each appeal to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(KISHORE C. SANT, J.)

PS.B.