

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

CRIMINAL APPEAL NO.238 OF 2023

SHAHRUKHA BADEKHA PATHAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. T. A. Quadri
APP for Respondent No. 1: Mr. S. W. Munde
Advocate for Respondent No. 2 : Mr. M. M. Parghane

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 21, 2023

PER COURT :

1. When this Court has shown disinclination to grant relief to Appellant No. 1, learned Counsel for this Appellant, on instructions, seeks withdrawal of the Appeal qua this Appellant.

2. Appeal stands dismissed as withdrawn qua Appellant No. 1.

3. Appellant Nos. 2 to 5 being aggrieved by the order of rejection of anticipatory bail application in connection with Crime No. 17/2023 registered with Sengaon Police Station, Dist. Hingoli for the offences punishable under Sections 143, 147, 149, 506 of IPC and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Atrocities Act') have preferred this Appeal.

4. It is the contention of the informant that on 18.01.2020 minor daughter of the informant was kidnapped by the Farooq Pathan and in respect of the said incident report has been lodged with Kagwad Police Station, State of Karnataka on 28.01.2020. It is further contention of informant that on 17.02.2020 Appellants and co-accused threatened informant and his wife not to lodge any complaint to the police in respect of kidnapping of their daughter. It is also alleged that present Appellants have abused and insulted them over the caste.

5. Learned Counsel for the Appellants states that the FIR has been lodged belatedly on 17.01.2023 in respect of incident occurred on prior to three years. It is his submission that even complaints lodged previously do not indicate the involvement of the Appellant Nos. 2 to 5 as they are no specific allegations in those complaints referring to the names of these Appellants or attributing specific role

against them.

6. Learned APP and learned Counsel for Respondent No. 2/informant opposed the Appeal by submitting that there is no delay in lodging FIR as from 09.03.2020 onwards various complaints were made to police and other authorities and since, no cognizance of those complaint is taken, the delay is caused in registering the crime. Thus, this cannot become ground for grant of anticipatory bail.

7. There is substance in contention of learned APP and learned Counsel for informant that there is no intentional delay on the part of the informant in reporting the incident in question to the police. However, in the complaint made by the informant, the names of the Appellant Nos. 2 to 5 are not referred. Consequently, no specific allegations are made against them of threatening informant or abusing him over his caste.

8. Having regard to the facts of the case, there is reason to accept the contention of the Counsel for the Appellants that it could be a case of false

implication. Since doubt is created about any offence being committed by the Appellants, the bar of Section 18 of the Atrocities Act does not get attracted. Hence, appeal stands allowed. Hence, the order:

O R D E R

- (i) Appeal of Appellant Nos. 2 and 3 is allowed by confirming order dated 27th March, 2023.
- (ii) In the event of arrest the Appellant Nos. 4 & 5 in connection with Crime No. 17/2023 registered with Sengaoon Police Station, Dist. Hingoli for the offences punishable under Sections 143, 147, 149, 506 of IPC and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they shall be released on bail on furnishing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) each with one surety in the like amount.
- (iii) They shall attend the concerned police as and when required.
- (iv) They shall not contact the witnesses directly or indirectly.
- (v) They shall not interfere with the evidence in any manner whatsoever.
- (vi) They are further directed to cooperate the investigating agency for further investigation.

(R.M. JOSHI, J.)