

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

CRIMINAL APPEAL NO.445 OF 2023

1. Raju s/o Laxman Mane
2. Ajit s/o Mahendra Shirke

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station, Bhoom, Dist. Osmanabad
2. Sakhubai w/o Uttam kale,

Mr. S. G. Kawade, Advocate for the appellants
Mr. S. N. Morampalle, APP for the respondent/State
Mr. Dhananjay Patil, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 20th JULY, 2023

P.C. :-

1. The applicants apprehend arrest in connection with Crime No. 86 of 2023 registered with Bhoom Police Station, Dist. Osmanabad for the offences punishable under Sections 504, 506 of IPC and under Sections 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Act').
2. The informant claims that she is residing along with her two sons and three daughters at Gat No. 491 belonging to Vijay Thorat in teen shed. It is alleged by her that on 13th April, 2023 at around 6.00 pm

present applicants came in front of their house and abused them over the caste. They also threatened to kill them by burning the house. On the next day i.e. on 14th April, 2023 at around 1.00 pm also present applicants came and threatened the informant and her daughter-in-law. She claims that the said incident has occurred in presence of few witnesses. On the basis of these allegations the present applicants apprehend arrest.

3. Learned counsel for the applicants states that there is disputes of the father of the applicants with Vijay Thorat over Gut No. 491 and that at the behest of this Vijay Thorat present report has been lodged. In order to support his submission he placed upon the order passed by the Civil Court in R.C.S. No. 268 of 2017 wherein the said Vijay is party in defendant. It is further contended that there is unexplained delay in lodging of the FIR. It is also argued that as far as the incident of 13th April, 2023 is concerned, there is the alleged incident has not occurred in the presence of any third person. So far as incident of 14th April, 2023 is concerned, it is contended there is no allegation that on that day any abuses over the caste were made by the applicants against informant.

4. Learned APP opposed the application by contending that there are statements of the witnesses who had supported the incident

occurred on 14th April, 2023 at around 1.00 pm. Thus, according to him it is not a case for grant of anticipatory bail.

5. Learned counsel for the informant opposed the application on the ground that the informant was scared and therefore the report could not be lodged immediately. According to him mere delay in lodging of the report would be sufficient to discard the contention of the informant. He further argued that the police has not applied the provisions of Section (3)(g) of the Act. According to him any interference caused in the possession of the person belonging to SC or ST community also amounts to an offence and the perusal of the first information report indicates.

6. There is no dispute about the fact that the incidents in question have occurred on 13th April, 2023 and 14th April, 2023. Though it is stated by the informant that she was scared and therefore could not lodge report. However she does not state as to what happened on 16th April, 2023 that she could lodge such report. This assume importance in the light of the fact that as per the first information report the informant is residing in gut No. 491 which belongs to Viay Thorat. There is *prima facie* material placed on record to indicate that there are disputes between the applicants and Vijay Thorat. The order below Exhibit 5 passed in RCS No. 268 of 2017 supports the contention of applicants in this regard.

7. From the perusal of the first information report it is clear that the incident occurred allegedly on 13th April, 2023 was not in public view as no independent witness was present. As far as incident of 14th April, 2023 is concerned, there is no allegation against the applicants of any abuses over the caste of the informant. As regards submission of the learned counsel for the informant about applicability of the offence punishable under Section 3(g) of the Act is concerned, even informant in her report does not claim that because she belonged to the particular caste, interference was sought into the possession of the said property. Considering the pending dispute in respect of the same property, the possibility of false implication cannot be ruled out. Since, serious doubt is created about occurrence of incidents as alleged by informant, bar under Section 18 of the Act does not apply to the present case. Nothing is to be recovered at the instance of applicants and their custodial interrogation is not necessary. They are also not likely to flee from justice. Hence it is a fit case to protect the applicants from arrest. Appeal is allowed in terms of interim order dated 16th June, 2023.

(R. M. JOSHI, J.)

ssp