

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

916 CRIMINAL APPEAL NO.520 OF 2022

VILAS MADHAV SAWAKE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants :Mr. Awasarmol Rahul O.
APP for Respondents: Mr. P M Kkulkarni
Advocate for Respondent 2 : Mr. Ketan D. Pote
(Appointed)

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CORAM : KISHORE C. SANT, J.
Dated: January 31, 2023

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PER COURT :-

1. Heard learned advocates for the respective parties.
2. The appellants have filed this appeal seeking their release on bail in connection with Crime registered with Goregaon Police Station, Tq. Sengaon, District Hingoli bearing No.0144 dated 17.6.2022 lodged at the instance of respondent no.2.
3. While issuing notices to respondents, the appellants have already withdrawn the appeal to the extent of appellant no.1-Vilas Madhav Sawake and 3- Nitin s/o Mahadev Gawande, who were accused nos.1 and 3, respectively. Thus,

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now this appeal is only by appellant nos.2 and 4, who are original accused nos.2 and 4.

4. It is allegation of respondent no.2 that on 3.6.2022 at about 3.00 to 3.30 pm, he was assaulted by the appellants. So far as the allegations in the name of caste are concerned, those are only against appellant nos.1 and 3. So far as present appellants are concerned, allegation is that they had assaulted with fist and blows.

5. It is submitted by the learned advocate for the appellants that, so far as the offence under section Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are concerned, are not seen in the FIR. The allegation was against other accused persons, who already have withdrawn their appeal. He submits that though the incident alleged is dated 3.6.2022, however, the FIR is lodged on 17.6.2022. Thus, there is delay of almost two weeks in lodging the FIR. He invited attention of this Court to FIR that was lodged by accused no.1 in the same police station on 5.6.2022 wherein, present respondent no.2 is shown as accused. The said complaint was filed for the offences punishable under sections 326, 323, 504, r/w 34 of the IPC. He submits that it is because of the enmity between the
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parties, this false FIR is lodged. When as a matter of fact, it is respondent no.2, who had assaulted accused no.1.

6. Learned advocate for respondent no.2 submits that the accused persons are from the influential family in the village and if they are released on bail, there is every likelihood of misusing of the liberty at their hands and prays for rejection of the appeal.

7. The learned APP produced on record police papers showing that the informant has received injury in an incident and, therefore, he was required to be admitted in the hospital. By looking at the medical case record, it is seen that history is given as assault by somebody. Thus, while in the hospital, even the name of the person was not also given who has exactly assaulted the informant. It is thus seen that in view of the fact that FIR was lodged after two weeks of the incident, possibility of false implication cannot be ruled out. Though, in the FIR it is stated that the FIR is being lodged after the informant was discharged from the hospital, still it is necessary to see that the police also did not find it to be a serious incident and, therefore, police have also not registered any offence till 17.6.2022.

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8. Considering that no allegations are made against these accused persons, as they have abused in the name of caste and it also appears that the FIR is filed after two weeks; so false implication cannot be ruled out. Hence, following order.

O R D E R

- i. Criminal appeal stands allowed in respect of accused nos.2-Mahadev s/o Udaybhan Gawande and 4- Satish s/o Mahadev Gawande.
- ii. The present appellant nos.2 and 4 be released on bail in the event of their arrest in connection with FIR no.0144 of 2022 registered with Goregaon Police Station, dated 17.6.2022 for the offence punishable under sections 324, 504, 506, 143, 147 of the Indian Penal Code and u/s 3(1)(r), 3(1)(s) 3(2)(va) of the Scheduled Castes and Scheduled Tribes, (Prevention of Atrocities)Act, 1989 on furnishing PR Bond and solvent sureties in the sum of Rs.15,000 (Rs. Fifteen Thousand), each.
- iii. The appellant nos.2 and 4 shall not contact the informant or the witnesses and shall not tamper with the evidence.

- iv. The appellants shall attend the concerned police station till filing of the charge-sheet twice in a week as per the time decided to be informed by the I.O.
- v. With this Criminal Appeal stands disposed of.
- vi. Learned advocate for respondent no.2 is appointed through Legal Aid. He shall be entitled to receive the fees as per the rules.

(KISHORE C. SANT, J.)

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