

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

938 CRIMINAL APPEAL NO.614 OF 2023

1. SHIVRAJ MANMATHAPPA MULE

2. ROHAN SHANTIVEER MULE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr. Ajinkya Reddy
APP for Respondent – State : Mr. S.W. Munde
Advocate for Respondent No.2 : Mr. K.P. Rodge

...

AND

CRIMINAL APPEAL NO.651 OF 2023

SHANTVEER MANMATHAPPA MULE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellant : Mr. V.S. Kande (Absent)
APP for Respondent – State : Mr. S.W. Munde
Advocate for Respondent No.2 : Mr. K.P. Rodge

...

CORAM : R. M. JOSHI, J.

DATE : SEPTEMBER 07, 2023

PER COURT :

. By way of these appeals, the appellants are challenging the order dated 10.07.2023 passed by the learned Additional Sessions Judge, Udgir in Criminal M.A. (Bail) No. 152 of 2023 thereby rejecting the bail application filed by applicants seeking anticipatory bail and hence they approached this Court seeking anticipatory bail

in connection with Crime No.391 of 2023 registered with Udgir Rural Police Station, Dist. Latur for the offences punishable under Sections 324, 143, 147, 148, 149, 323 of the Indian Penal Code (hereinafter referred to as the 'IPC') and Sections 3 (1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter 'Atrocities Act').

2. According to the first informant, incident occurred on 16.05.2023 at around 08:30 p.m. wherein appellants along with co-accused came to the spot where the construction work was going on. It is further alleged that the informant told them not to carry out construction till the decision of the Court, at that time all the accused persons abused him over the caste. There is allegation against appellant - Shantveer that he caused assault on the head of the informant with iron rod and others assaulted him with fists and kick blows.

3. Learned counsel for the appellants submits that admittedly there are disputes between the parties over the land in question and in this regard civil proceeding is pending. It is further submitted that the appellants have filed First Information Report

against the informant and others on 18.06.2022 as well as on 21.06.2023. It is his contention that the present report is lodged by way of counter blast to the reports lodged by the appellants. It is submitted that the allegation in the FIR of all the accused in one go abusing the informant over his caste is not possible.

4. Learned counsel for the appellants further submits that it is *modus operandi* of the informant and his family members to create a civil dispute first and then to involve other side for the offences under the Atrocities Act. In order to support his submissions, reliance is placed on the statement of the informant recorded on 15.02.2023 in different crime.

5. Learned APP and learned counsel for the informant opposed the said contentions including the contention of the learned counsel for the appellants about delay being caused in lodging of the FIR. By referring to the record it is pointed out that in fact the statement of the informant was recorded on 19.05.2023, however in order to facilitate the appellants to lodge report against the informant first, the report was not lodged on the basis of his statement.

By referring to the FIR as well as the statements of witnesses it is contended that there are specific allegations against the appellants of they abusing and insulting the informant in public view and hence the bar of Section 18 of the Atrocities Act attracts to the present case.

6. The incident in question has occurred on 16.05.2023, whereas the statement of the informant is recorded on 19.05.2023. There is no explanation as to why no other person could have reported in respect of the said incident. Even accepting the fact that there is no delay *per se* in lodging of the report, this Court cannot ignore to the fact that there are disputes between the parties. In this regard it is pertinent to note that not only civil disputes but also criminal case is registered against the informant by the appellant side. In such circumstances, the Court has to be cautious in order to appreciate the allegations made in the FIR. Perusal of the FIR no doubt discloses that the incident in question has occurred in public view, however the allegation made is that five persons in one voice abused the informant over his caste is not believable at this stage. This is more so in view of the history of the informant of making similar allegations against the person with whom there is dispute with

regard to the property. The provisions of the Atrocities Act are not expected to be invoked in order to falsely implicate someone in the crime. The intention behind the said enactment is to ensure that the persons belonging to SC and ST communities are not insulted or abused by any person. There is *prima facie* material on record to accept submissions made on behalf of the learned counsel for the appellants that this could be a routine practice of the informant to make similar allegations against the person with whom the dispute over the property exists and possibility of false implication of the appellants therefore is not ruled out. Coupled with the said facts there is no specific allegation as to which appellant abused informant over his caste, in considered view of this Court the bar of Section 18 does not get attracted to the present case.

7. As far as the other offences are concerned, they are bailable in nature. As regards the recovery of weapon allegedly used for the commission of crime is concerned, the appellants shall be treated in the custody of the police for the purpose of said recovery. Having considered the apprehension of the informant about he or the witnesses being pressurized by the appellants, it will be taken care of

by directing the appellants to attend the concerned police station once in fortnight till filing of the charge-sheet.

8. Having regard to these facts, following order is passed.

ORDER

(i) The appeals are allowed in terms of the interim orders dated 24.07.2023 in Criminal Appeal No.651 of 2023 and dated 18.07.2023 in Criminal Appeal No. 614 of 2023 respectively.

[R. M. JOSHI]
JUDGE

GGP