

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

18 CRIMINAL APPEAL NO.843 OF 2022

**BHAGWAN VISHWANATH TIKHE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA**

Mr.M.A. Dond, Advocate for the appellant.
Mr.PN. Kutti, APP for the respondent/State.
Mr.S.S. Shete, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 20.02.2023**

PC :-

01. Heard learned Advocates for the parties.
02. This is an appeal seeking bail of the appellant in the event of their arrest in connection with Crime No.52 of 2022 registered with Police Station, Gangapur lodged by respondent No.2. Their earlier appeal to this Court was rejected, by order dated 21.09.2022 in Criminal Appeal No.227 of 2022. It is informed that the parties had approached the Hon'ble Apex Court, however, there also the challenge was negated. After filing of the charge-sheet, the appellant again approached the Sessions Court, seeking bail in event of their arrest. Said application also came to be rejected by order dated 19.10.2022 and thus now the appellants are before this Court.

03. Respondent no.2 lodged a complaint with the allegation that while he was working as a Gramsevak with village Shingi, after event of Chhatrapati Shivaji Maharaj Jayanti, some persons including present appellants were still at Grampanchayat. Some of them entered the Grampanchayat office and started insisting that their names be included in the Gharkul scheme. The respondent No.2 informed that he is not having an authority to include such names. It is alleged that on that the present appellants abused respondent No.2 in the name of caste and threatened him with dire consequences. On that FIR came to be lodged for the offences punishable under section 143, 147, 149, 353, 323, 504, 506 of the Indian Penal Code and section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

04. The learned Advocate for the appellants also pointed out that there are earlier complaints filed by the appellants with the authority as respondent No.2 was not working properly. A representation was made on 27.01.2022 to the Block Development Officer. He further pointed out that respondent No.2 had even on earlier occasion had filed complaint when he

was working at Grampanchayat in different village against some villagers on 18.07.2019 and submits that respondent No.2 is, thus, in habit of lodging false complaints by taking undue advantage of his caste. He further pointed out that even on the complaint of some persons, action was taken against respondent No.2 and he was suspended by order dated 01.04.2022. He thus submits that the present FIR is only because of the fact that the present appellants have taken action and had filed complaint against respondent No.2.

05. The learned Advocate for respondent No.2 submits that the allegations are very specific as it is clear from the FIR itself. He further pointed out that there are 5-6 independent persons belonging to upper caste, who have supported the FIR in their statements. He points out earlier order passed by this Court dated 21.09.2022 in Criminal Application No.227 of 2022, wherein this Court had rejected the appeal. He submits that only now charge-sheet is filed and that cannot be said to be change of circumstance. He further submits that in view of section 18 of the Atrocities Act, there is specific bar from applying section 438 of the Cr.Pc. and for this reason also the appeal deserves to be dismissed.

06. The learned APP also opposes the appeal stating that there are statements of independent persons in support of the FIR and prays for rejection of the appeal.

07. The learned Advocate for the appellants relied upon judgment in the case of **Subhash Kashinath Mahajan Vs. The State of Maharashtra & Ors., reported in AIR 2018 SC 1498** and invited attention of this Court to para 59 of the judgment, wherein it is held by the Hon'ble Apex Court that when the allegations are clearly motivated and false, those cannot be treated as enough to deprive a person of his liberty without independent scrutiny. It was further held in para 60 that exclusion of Section 438 Cr.P.C. applies when a prima facie case of commission of offence under the Atrocities Act is made out.

08. The learned Advocate for the appellant further relied upon judgment passed by this Court at Principal Seat in the case of **Javed Raza Shroff Vs. The State of Maharashtra & Anr., in Criminal Appeal No. 1119 of 2022**, wherein bail was granted in the event of arrest. In the fact of that case, it was held that the allegations in the FIR were after thought and concocted and were modified as the complaint was lodged belatedly. In that case even

the allegations were vague. The period of occurrence was not specified and in that case the appeal for bail was allowed.

09. The learned Advocate for respondent No.2 relies upon judgment in the case of Prathvi Raj Chauhan Vs. Union of India & Ors., reported in (2020) 4 SCC 727, wherein the Hon'ble Apex Court has clearly held that in view of section 18 of the Atrocities Act, the Court does not have jurisdiction under section 438 of the Cr.PC. This Court has also considered the judgment in the case of Vilas Pandurang Pawar & Anr. Vs. State of Maharashtra & Ors. reported in (2012) 8 SCC 795, wherein Hon'ble Apex Court has held that in view of specific bar under section 18, application seeking anticipatory bail cannot be considered.

10. Considering the judgments and ratio, this Court finds that the judgment in the case of Subhash Kashinath Mahajan (Supra) is not applicable as in that case the Court has come to the conclusion that the allegations are motivated and false and in that view it was held that section 438 of the Cr.PC. has no application.

11. In this Case, this Court finds that the FIR clearly spells out an offence. There are statements of independent witnesses which are produced along with charge-sheet, which clearly show that the incident has taken place as alleged by the informant/respondent No.2. Thus, this Court finds that no case is made out to cause interference in the Criminal Appeal. The learned Special Judge has rightly considered all the aspects involved in the matter and rightly passed the order. For all these reasons, the appeal fails and disposed off accordingly.

[KISHORE C. SANT, J.]