

2. The First Information Report (for short 'FIR') was registered on 01.04.2023 at the instance of Respondent No.2 alleging that, on 30.03.2023 at about 6.00 a.m. the accused were erecting the compound on his property which is in possession of the father of complainant and when they were questioned, the accused threatened the complainant and others and also abused them on the basis of caste.

3. The Appellants had preferred application for anticipatory bail before the Court of Sessions which has been rejected vide order dated 15.04.2023.

4. Learned Advocate for the Appellants submitted that the FIR is false. It suffers from mala fides. There are no independent witnesses to support the allegations in the FIR. The incident of caste abuses has not occurred within public view. Cross FIR has been registered against complainant and others with the same Police Station vide C.R. No.242 of 2023 on 02.04.2023 for offences punishable under Sections 327, 385, 427, 504, 506, 143, 147, 149 of IPC. The Appellant No.1 has purchased the property by executing Sale Deed dated 09.05.2019 with one Balkrushna Shankar Kamble. The complainant and others were trying to encroach upon said property and claiming right in the said property.

5. Learned A.P.P. submitted that the offences under the IPC as well as atrocities Act are clearly made out. Specific role has been attributed to the Appellants having abused the complainant and others on the basis of their caste. The incident had occurred in the public place. The investigation is in progress. Custodial interrogation of the Appellants is necessary. Statements of eye witnesses support the version of complainant.

6. Learned Advocate for Respondent No.2 submitted that, the fact that the cross FIR has been registered against the complainant and others in the present case would indicate that the incident had occurred when the presence of accused is established. The statement of complainant is corroborated by independent witnesses. The Appellants have also committed the offence of outraging modesty and assault as spelt out in the FIR.

7. Perused the documents annexed to the Appeal as well as the investigation papers. Apparently the Appellant No.1 had executed Sale Deed with one Balkrushna Kamble on 09.05.2019 and purchased the property bearing No.R.S.N.No.130 situated at Islampur. From the tenor of the FIR it can be seen that the alleged incident had occurred at about 6.00 a.m. The complainant and others then approached the Police and again visited the spot of incident. The Police then intervened and advised them to resolve

the dispute. Thereafter the accused again entered into the property and the said fact was reported to the Police. On the said occasion apparently the incident was not reported to Police alleging that the complainant and others were abused on caste or that the incident of outraging modesty has been committed by the accused. Perusal of the investigation papers indicates that the Police have recorded the certain statements of witnesses. However, apparently there is no statement of any independent witnesses to support the alleged abuses on caste. It appears that there is dispute over property between the parties. The appellants have contended that the FIR have lodged out of *mala fides*.

8. Considering the factual aspects of this matter, the bar under Section 18 of the SC/ST (Prevention of Atrocities) Act would not be an impediment to grant relief under Section 438 of Cr.P.C. to the Appellants. Hence, I pass the following order :

ORDER

- i. Criminal Appeal No. 500 of 2023 is allowed;
- ii. The order dated 15.04.2023 passed by the Special Judge, (Atrocities Act), Islampur in Misc. Bail Application No.75 of 2023 is quashed and set-aside.
- iii. In the event of arrest of the Appellants in connection with C.R. No. 237 of 2012 registered with Islampur Police Station, Dist. Sangli, the Appellants be released on bail on

furnishing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

iv. The Appellants shall attend the investigating officer on 14th, 15th & 16th June, 2023 between 11.00 a.m. to 1.00 noon and thereafter as and when called for.

v. The Appellants shall not tamper with evidence and shall cooperate with the investigation.

vi. It is clarified that the observations made in this appeal are prima facie and only for considering this appeal for grant of anticipatory bail and the trial Court shall not be influenced by the same during the trial.

vii. Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)