

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 651 OF 2019

Rajaram Sopan Bodare & Anr.	..Appellants
Versus	
The State of Maharashtra & Anr.	..Respondents

Mr. Umesh H. Pawar for Appellants.

Mr. S. R. Agarkar, APP for State/Respondent No.1.

Mr. Rupesh Bobade (Appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 2 FEBRUARY 2023

PC :

1. The Appellants have challenged the order dated 11/04/2019 passed by learned Additional Sessions Judge, Sangli in Criminal Bail Application No.365 of 2019. In effect, the appellants are seeking anticipatory bail in connection with C.R.No.146 of 2019 registered at Vita police station, under sections 354-A, 323, 504 and 506 r/w. 34 of the I.P.C. and under sections 3(1)(r), 3(1)(s), 3(1)(w)(i)(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act').

2. Heard Shri. Umesh Pawar, learned counsel for the Appellant, Shri. Agarkar, learned APP for the State/Respondent No.1 and Shri. Rupesh Bobade, learned Appointed Advocate for the Respondent No.2.

3. The F.I.R. is lodged by the Respondent No.2. She has stated that the Appellants who are husband and wife are residing in the same village as the Respondent No.2. The Appellants were aware that the Respondent No.2 belonged to a scheduled caste. On 20/03/2019, at about 11.30a.m. she had taken her cattle for giving them water from the Government water supply. At that time, the appellant No.1 came there and asked her to switch off the pump on the bore-well. He further told her to come with him to his house for filling water. It is alleged that, he held her hand and started pulling her. According to the Respondent No.2, she refused. At that time, he abused her with reference to her caste. She has also alleged that the appellant No.1 assaulted her with kicks and fist blows. According to her, one Sujit Sakat was present at the spot at that point of time. In the night at about 8.30p.m. her husband returned from work. She told him about the incident that

had taken place in the morning. Her husband started questioning Sujit as to why he did not help the Respondent No.2. At that time, both the appellants and one Prakash Budhawale came out of their house and started abusing and assaulting the Respondent No.2 and others. At that time, Santosh Sakat and the Appellant No.1's mother in law pacified them. On the next day, i.e. on 21/03/2019 the F.I.R. was lodged by the Respondent No.2 at about 9.58p.m.

4. Learned counsel for the Appellants submitted that, there was a long standing dispute and quarrel between the Appellants and the Respondent No.2's family. The narration in the F.I.R. is contradictory. He submitted that, according to the Respondent No.2, the Appellant No.1 abused her with reference to the Caste and prevented her from taking water from the common borewell. On the other hand, he asked her to come to his house for filling water. This conduct on the part of the Appellant No.1, as alleged by the Respondent No.2 is contradictory. Therefore, the Appellants could not have entertained any ill-will towards the Respondent No.2 because she belonged to a scheduled caste. He further submitted that the statement of the alleged eye witness Sujit Sakat

does not corroborate the Respondent No.2's version. He further submitted that, even in respect of the incident in the night, there are contrary versions. He further submitted that, in any case, the incident was allegedly seen by only the relatives of the Respondent No.2 and, therefore, the offences U/s.3(1)(r) and 3(1)(s) are not made out. He submitted that, even other offences under the Atrocities Act are not attracted as her story does not appear to be true.

5. Learned counsel for the Respondent No.2, as well as, learned APP opposed these submissions. Both of them submitted that there are also allegations for commission of offences punishable under sections 3(2)(va) and 3(1)(w)(i)(ii) of the Atrocities Act. These allegations are clearly made out from her statement and, therefore, because of the bar U/s.18 of the Atrocities Act, anticipatory bail cannot be granted to the appellants.

6. I have considered these submissions. So far as, first part of the incident which had taken place in the morning is concerned,

at that time, the appellant No.2 was admittedly not present. There are allegations that the Appellant No.1 abused her with reference to her caste in the morning. At that point of time, the eye witness Sujit Sakat was present there, but he has not made any reference to abuse with reference to the caste. He has stated that the Appellant No.1 had caught the Respondent No.2 by her hand and was abusing her. He then pacified them and told both of them to go to their houses. There is no reference that the appellant No.1 had abused the Respondent No.2 with reference to the caste. In any case, Sujit's conduct itself also shows that the incident in the morning was not very serious because, he had advised the Respondent No.2 and the Appellant No.2 to go back to their houses. He had not reported this incident to anybody else. During the entire day even the Respondent No.2 did not report this matter to anybody else.

7. In the night when the second incident had taken place, the Respondent No.2 has not stated that either of the Appellants had abused her with reference to the caste. On both these occasions, there is a reasonable doubt as to whether any hurt was

caused to the Respondent No.2 and others.

8. After the incident, the F.I.R. was not lodged immediately. The proforma of the F.I.R. shows that the police were informed on the next day in the night at around 10.00p.m. Even this delay in the context of the case assumes importance. At least it does throw some doubt about the prosecution case and there is no reason as to why the Respondent No.2 or her husband could not have approached the police immediately. The incident is quite old. About four years have passed since then.

9. Considering all these aspects and particularly taking into account that it is doubtful whether the offence under the Atrocities Act is committed, the Appellants deserve protection of anticipatory bail order. It is made clear that, all these observations are made only for the purpose of passing of this order, the Trial Court shall not be influenced by these observations while dealing with the trial.

10. Hence, the following order:

O R D E R

- i) In the event of their arrest in connection with C.R.No.146 of 2019 registered at Vita police station, the Appellants are directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30000/- each with one or two sureties each in the like amount.
- ii) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)