

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

CRIMINAL APPEAL NO. 1747 OF 2019

1. Chandu Hariba Godse
2. Mina Chandu Godse
3. Bharat Hariba Godse

..Appellants.

Versus

The State of Maharashtra & Anr.

..Respondents

Ms. Pooja Satpute a/w. Tushar N. Sonawane for Appellants.

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

Mr. Vaibhav Kulkarni a/w. Mr. Mrunal Surana i/b. Siddharth S. Deshpande for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 24 JANUARY 2023

PC :

1. The Appellants have challenged the order dated 06/12/2019 passed by learned Additional Sessions Judge, Pandharpur, in Criminal M.A.No.572 of 2019. In effect, the Appellants are seeking anticipatory bail in connection with

C.R.No.239 of 2019 registered at Mangalwedha police station on 30/05/2019, under sections 452, 427, 324, 323, 504 and 506 of the I.P.C. and under sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC & ST' Act').

2. Heard Ms. Pooja Satpute learned counsel for the Appellants, Shri. Agarkar, learned APP for the State/Respondent No.1 and Shri. Vaibhav Kulkarni, learned counsel for the Respondent No.2.

3. The F.I.R. is lodged by the Respondent No.2. It is registered on 30/05/2019. He has stated that, he was having his tractor garage at Mallewadi (Sharad Nagar). He is staying in the half portion of his garage. According to him, in the year 1992 the Gram Panchayat had given this place to the Respondent No.2, but it is not transferred in his name and, therefore, he had filed a R.C.S.No.84 of 2018 in the Civil Court against the State of Maharashtra and others. The Appellants are his neighbours. They were staying as the persons who were given that land for their

rehabilitation. On 22/04/2019, at around 7.30p.m. all the appellants entered the Respondent No.2's house. It is alleged that the Appellant No.1 abused him with reference to the caste. The Appellant Bharat also abused him and gave blows on his chest. When the Respondent No.2's wife tried to intervene, she was also assaulted. It is alleged that the Appellant Meena beat her with footwear. Then they caused damage in the house and then went away. The Respondent No.2 had approached the Mangalwedha police station after two days from the incident. According to him, he was scared because of the threats. After the inquiry was conducted in his application, this F.I.R. was lodged.

4. Learned counsel for the Appellants submitted that the incident had allegedly taken place on 22/04/2019 and the F.I.R. was lodged on 30/05/2019. This delay is inordinate. She further submitted that the incident had taken place within four walls of the Respondent No.2's house, therefore, ingredients of Section 3(1)(r) and 3(1)(s) of the SC & ST Act are not fulfilled. Similarly, there is nothing to show that the offence U/s.3(2)(va) of the SC & ST Act is committed and, therefore, bar U/s.18 of the said Act will

not operate. She submitted that the Respondent No.2 is having habit of making false allegations and, therefore, the Gram Panchayat has passed a resolution on 23/05/2019 against the Respondent No.2. It is mentioned in the resolution that the Respondent No.2 was harassing the villagers and was threatening to lodge false complaint. She submitted that the F.I.R. against the appellants is also one of those false complaints. She submitted that the Appellants are on interim protection since the year 2019. The charge-sheet is already filed, therefore, their custodial interrogation will not serve any purpose. The Appellant No.2 is a lady. From the record it is quite clear that the F.I.R. is filed with malafide intentions.

5. Learned counsel for the Respondent No.2 submitted that the ingredients of the SC & ST Act are made out and, therefore, because of the bar U/s.18 of the said Act, anticipatory bail cannot be granted to the appellants. He submitted that, there was no delay on the part of the Respondent No.2 in approaching the police, because within two days he had approached the Mangalwedha police station. He further submitted that the

resolution was passed by the Gram Panchayat on 23/05/2019 i.e. much belatedly after the incident. It was passed because of the influence exerted by the Appellants. There are allegations pertaining to Section 354 of the I.P.C.

6. Learned APP also opposed this Appeal. He produced the investigation papers before me, which included statements of the independent witnesses namely Pradip Parkale and Harichandra Lokhande. Besides them, statements of the Respondent No.2 and his wife were recorded U/s.164 of the Cr.P.C.

7. I have considered these submissions and I have also perused the investigation papers produced before me. There is a report dated 25/05/2019 submitted by the Police Inspector, Mangalwedha police station, to the Sub Divisional Police officer, Mangalwedha division; in which, there is a reference to the statements of Sarpanch Raiban and Hanumant Maske. It was mentioned in the report that no offence was disclosed. In spite of this, subsequently, the F.I.R. was registered on 30/05/2019. Besides this, the two aforesaid witnesses Pradip Parkale and

Harichandra Lokhande were purely chance witnesses and evidentiary value of their statement would be a matter of trial. There are no corroborative circumstances in the nature of spot panchanama or medical certificate. In any case, there is delay of at least 2 days in approaching the police. In the background of dispute between the Respondent No.2 and other villagers, there is also a possibility of false implication. The alleged incident is old. It has allegedly taken place on 22/04/2019. The Appellants were on interim protection since 03/01/2020 pursuant to the order passed by this Court (Coram: Prithviraj K. Chavan, J.). Even before that, they were on interim protection for some period before the trial Court in the year 2019. Considering all these aspects, the Appellants can be protected by an order of anticipatory bail. It is made clear that, all the observations made in this order are restricted to passing of this order. The trial Court shall not be influenced by these observations during the trial.

8. Hence, the following order:

O R D E R

- i) In the event of their arrest in connection with C.R.No.239 of 2019 registered at Mangalwedha 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.)