

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 14 OF 2023**

Mahesh Ashok Dubal
Age: 36 years, Occ: Business,
R/at: Narwad, Tal-Miraj, Dist.-Sangli.

...Appellant

Versus

1. The State of Maharashtra

2. Nagesh Shivaji Pawar

...Respondents

Mr. Sanjeev Kadam a/w Mr. Piyush Toshnival i/by Mr. Aashish
Satpute Advocate for Appellant.

Mr. Ajay Patil, APP for Respondent-State.

Mr. Sushan Mhatre, Amicus Curiae for Respondent No.2.

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**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 1st MARCH 2023

P.C.:-

1. This is an Appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to 'SC/ST Act') challenging the Order dated 17th December 2022 passed by the learned Additional Sessions Judge, Sangli in Criminal Bail Application No.1225 of 2022 refusing pre-arrest bail to the Appellant in Crime No.525 of 2022 registered with Miraj Rural Police Station, Dist. Sangli. First

Information Report (for short 'FIR') is registered by Respondent No.2 on 2nd December 2022 for offences punishable under Sections 354, 354-B, 452, 324, 323, 143, 147, 148, 149, 504, 436, 427 of the Indian Penal Code and Sections 3(1)(w)(i), 3(2)(v), 3(2)(va) of the SC/ST (Prevention of Atrocities) Act.

2. The case of the prosecution is that, the informant Nagesh Pawar is resident of Khaparkuti *Gayran*, Narwad Tal-Miraj District, Sangli. On 1st December 2022, first informant's brother and brother-in-law went to village Narwad for purchasing sim cards for mobile. At about 8.30 p.m., his brother Badal informed him on phone that, accused Uttam Patil along with 10 to 12 persons questioned him as to why complaint was lodged against them. They managed to run towards their house. After sometime Uttam Patil, Kedar Shinde, Bharat Kurle, Saprem Kurle, Rama Awate, Sushil Mane, Vicky Sankpal, Mahesh Dubal (Appellant) and 15 to 20 persons entered into the house of informant and created commotion and ruckus. They broke the door of the house by using stone. Wife of first informant and sister intervened. They were assaulted. Blouse of informant's wife was torn. The accused pelted stones on the doors and TV sets and caused damage to property. They also damaged motorcycles by stones and sticks and set them on fire. T.V. set was set on fire. House and shed were pulled down and set on fire. They assaulted family members of first informant.

3. The Appellant preferred application for anticipatory bail before the Court of Sessions at Sangli. The said application was rejected vide order dated 17th December 2022.

4. Learned counsel for the Appellant submitted that, the FIR is vague. No specific overt act is attributed to the Appellant. Respondent No.2 and other persons from his community has encroached upon the *Gayran* land owned by village Narwad, Taluka Miraj, District Sangli. The Gramsevak of Gram Panchayat, Narwad has lodged two crimes bearing Nos. 396 of 2021 and 292 of 2022 dated 11th October 2021 and 17th June 2022 with Miraj Rural Police Station, District Sangli respectively. Since, the Appellant is contesting election of the village for the post of Sarpanch, he has been falsely implicated in this crime. Custodial interrogation of the Appellant is not necessary. Some people from complainant's side assaulted co-accused Uttam Patil on 1st December 2022 and NC report has been registered with Miraj Rural Police Station, District Sangli for offences punishable under Sections 323, 504, 506 of IPC. The allegations in the complaint are concocted. Appellant is elected member of Gram Panchayat Narwad and supported action against Government officials. The complainant is having grudge against Appellant.

5. Learned APP and learned Advocate for Respondent No.2 submitted that, Appellant has been named in the FIR. Offence is of serious nature.

Appellant and co-accused had barged into the house of the complainant. Family members were assaulted. The property was damaged. The motorcycles and premises were set on fire. There are 8 injured persons. Statements of injured persons are recorded. Investigation is in progress. Custodial interrogation of the Appellant is necessary. There is bar under Section 18 of the SC/ST (Prevention of Atrocities) Act for grant of pre-arrest bail.

6. We have perused the FIR, impugned Order passed by Sessions Court and the other documents annexed to this Appeal. The Appellant has been named in the FIR. The incident is of serious nature. All the accused including Appellant had barged into the house of the complainant and cause damaged to the property and set it on fire. The investigation is in progress. Learned Sessions Judge while rejecting the application for anticipatory bail had observed that, spot panchnama speaks nature of damage caused inside and outside the informant's house. The photographs were produced along with certificate under Section 65(B) of the Indian Evidence Act. The photographs *prima facie* shows that, motorcycles have been turned to ashes by setting them on fire. There was damage to the doors, windows and household articles. There are injury certificates of the injured persons which shows that, the Appellant is having complicity in the crime. There are statements of material witnesses including Police Patil of

the village. Record *prima facie* shows that, the Appellant along with co-accused went to the house of informant and other witnesses. Accused are residing in the same village and question of identification of the accused is of least importance. The informant and other witnesses have constructed house in the alleged *Gayran* land and such dispute can be resolved by the Government Authorities. The accused created ruckus by damaging the essential household articles of the informant and other witnesses and they have caused huge loss to the vehicles by setting them on fire. Considering the gravity of the offence, custodial interrogation of the Appellant is necessary.

7. The aforesaid observations were made by the learned Sessions Judge on the basis of the allegations in the FIR and the investigation conducted by police. FIR refers to the name of Appellant as person, who had participated in the crime. First informant has stated that, damage was caused to the property. Considering the gravity of the offence and role played by Appellant, he is not entitled for the relief of anticipatory bail. We do not find any infirmity in the impugned Order rejecting anticipatory bail passed by learned Sessions Judge. The Appeal is required to be dismissed.

8. It is required to be noted here that, after hearing both the sides, we had indicated to learned counsel appearing for Appellant that, the Court is not inclined to grant relief in this Appeal and at the request of learned

counsel for Appellant, the matter was kept back to enable him to take instructions, whether the Appellant proposes to withdraw this Appeal or invite Order on merits. When the matter was called out in the second session, the learned Advocate on record appearing for Appellant submitted that, co-accused has been granted anticipatory bail by the Sessions Court and he is relying upon the said order. It was brought to the notice of Advocate that, the matter was kept back only for the purpose of taking instructions as aforesaid and it is already indicated to him that Court is not inclined to grant relief to the Appellant. Learned Advocate for the Appellant then submitted that, Court may pass Order on merits and interim relief granted by this Court may be extended by a period of two weeks. We deprecate the practice adopted by learned Advocate for Appellant.

ORDER

- (i) Criminal Appeal No. 14 of 2023 stands dismissed.
- (ii) Order dated 17th December 2022 passed by the learned Additional Sessions Judge, Sangli in Criminal Bail Application No.1225 of 2022, is confirmed.
- (iii) The prayer for extention of interim relief for a period of two weeks is rejected.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)