

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

CRIMINAL APPEAL NO. 338 OF 2023

1. Manoj Rajbali Rajbhar
2. Santosh Rajbali Rajbhar ...Appellants

Versus

1. The State of Maharashtra
2. Ajitkumar Banarsiram Jaiswar ...Respondents

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Mr. A. R. Thakkar, Advocate for the Appellants.

Mr. Sushan Mhatre, Advocate for Respondent No.2.

Ms. Pallavi N. Dabholkar, APP for the Respondent No.1 – State.

Mr. Rajkumar B. Dongre (A.C.P), Ulhasnagar, Div. Thane City.

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CORAM : PRAKASH D. NAIK, J.
DATE : 13th JUNE, 2023.

PER COURT:

1. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST (Prevention of Atrocities) Act”) challenging the order dated 27.02.2023 passed by the learned Additional Sessions Judge, Kalyan, rejecting the application for anticipatory bail.

2. The Appellants are apprehending arrest in connection with C.R. No.15 of 2023 registered with Central Police Station for offences punishable under Sections 504 & 506 r/w Section 34 of

Indian Penal Code (for short “IPC”) and Sections 3(1)(c)(r)(s)(u)(y)(z) of SC/ST (Prevention of Atrocities) Act. The First Information Report (for short ‘FIR’) was registered on 07.01.2023.

3. The prosecution case is that the informant belongs to Scheduled Caste. He resides at the given address along with his family. Co-accused Jitendra Yadav, Pradhuvan Yadav, Chandrajit Yadav and the Appellants are his neighbours. In 2015, the co-accused Jitendra Yadav started constructing his house which was situated behind the house of informant. The co-accused Jitendra Yadav had stated that the adjoining wall is common and it is not owned only by the informant. The first informant had raised objection about the construction of the house and there was dispute between both the parties. The co-accused had abused the informant. He had lodged the report with the concerned Police Station in 2015. The incident relating to the alleged involvement of the Appellants had occurred on 01.12.2022, wherein the Appellants had allegedly abused the informant on the basis of his caste. Thereafter on 26.12.2022, the officials from the Ulhas Nagar Municipal Corporation had visited the spot to inspect the construction and at that time the co-accused had abused the complainant on the basis of his caste.

4. Learned Advocate for the Appellants submitted that there is inordinate delay in lodging the FIR. The incident had occurred on 01.12.2022, wherein the FIR was registered on 07.01.2023. The allegations are vague. There are no independent witnesses to corroborate the version of complainant. It cannot be said that the the abuses were heard against the complainant within the public view. The complaint is motivated. The FIR has been registered with *mala fide* intention on account of dispute over the wall.

5. Learned A.P.P. submitted that the investigation is in progress. Statements of witnesses were recorded. Offences are made out.

6. Learned Advocate for the Respondent No.2 submitted that the first informant has been harassed by the several persons including the Appellants. The offence is made out in the FIR. The first informant was abused on the basis of his caste. Even after the incident of 01.12.2022, the complainant was harassed continuously by the accused.

7. From the tenor of the FIR it is apparent that the specific incident qua the Appellants had occurred on 01.12.2022. It is alleged that the Appellants had abused the complainant on his caste. It appears that the last incident is of 26.12.2022 which prompted the first informant to approach the Police and lodge the FIR. Thus, although the incident qua the Appellants had occurred

on 01.12.2022, the FIR came to be registered on 07.01.2023. There is dispute amongst the first informant and several other persons on account of the wall. The prosecution could not point out the statement of any independent witnesses recorded during the course of investigation qua the incident dated 01.12.2022 to corroborate the version of the first informant. In the light of the aforesaid circumstances, prima facie it cannot be said that the incident had occurred within a public view. The FIR does not refer to presence of any independent person at the spot of incident at the time of alleged abuses.

8. Considering the factual matrix, bar under Section 18 of the Atrocities Act would not be an impediment to grant relief the Appellants. Hence, I pass the following order:

ORDER

- i. Criminal Appeal No. 338 of 2023 is allowed;
- ii. The order dated 27.02.2023 passed by the learned Additional Sessions Judge, Kalyan in Anticipatory Bail Application No.199 of 2023 is quashed and set-aside.
- iii. In the event of arrest of the Appellants in connection with C.R. No.15 of 2023 registered with Central Police Station, Thane City, the Appellants be released on bail on furnishing P. R. Bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;

- iv. The Appellants shall report the investigating officer on 19th, 20th & 21st June, 2023 between 11.00 a.m. to 1.00 noon and thereafter as and when called for.
- v. The Appellants shall cooperate with the investigation.
- vi. Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)