

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.371 OF 2023
WITH
INTERIM APPLICATION NO.1196 OF 2023

Dnyaneshwar Narayan Bhosle & Anr. .. Appellants

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Ashok M.Saraogi for the Appellants/Applicants.

Mr.N.B.Patil, A.P.P. for the State.

Mr.B.G.Bansode for the Respondent No.2.

API H.M.Kulkarni, attached to Badlapur Police Station,
present.

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CORAM: BHARATI DANGRE, J.

DATED : 12th APRIL, 2023

P.C:-

1. The Appeal is filed by the two Appellants, arraigned as Accused Nos.1 and 2 in C.R.No.70 of 2023 registered with Badlapur Police Station, which has invoked Sections 323, 324, 143, 144, 147, 148, 149 of the Indian Penal Code (for short, **“the IPC”**) and Sections 3(1)(r), 3(1)(s) and 3(1)(y) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (for short, **“the Act of 1989”**), being aggrieved by the order dated 17/03/2023, passed by the Additional Sessions Judge, Kalyan, thereby rejecting their bail

application. They came to be arrested on 07/03/2023, on being accused of committing the alleged offences, on the complaint filed by Rohit Dhangar on 07/03/2023 at about 4.15 hrs.

The complainant narrated that he alongwith the people in the neighbourhood had gathered at Shivaji Chowk, Badlapur for Holi celebration and the atmosphere was full of festivity, as people were greeting each other and enjoying the festival. At that time, it is alleged that Appellant No.1-Dnyaneshwar arrived and hurled abuses in the name of caste, which were heard by many persons present there. The abuses which are alleged to have been hurled by Appellant No.1 were not intended at any particular person, but the complainant's narration is, it was attributed to all the persons present there. It is quite possible that on the spot, there may be people from other community/caste present, as it appear that Holi celebration was for the entire locality.

Followed by this, the allegation in the complaint is, Accused No.3-Raju Lad, who belong to the same caste that of Appellant No.1, arrived there and he assaulted Aryan Raut by fist and blows. When Praful Dhangar intercepted, it is alleged that Appellant No.2 alongwith all other named accused persons and 10 to 15 unknown persons started assaulting Aryan, Praful and Aditya by fist and blows and by means of wooden sticks, which were lying there. The complainant sustained injury and even Aryan, Aditya and Praful are also reported to have sustained injuries. They started running helter and skelter, but were chased by the accused persons is the specific allegation.

The incident was reported to the police station at 4.15 hours and the complaint was registered. The subject C.R. invoke Sections 3(1)(r), 3(1)(s) and 3(1)(y) of the Act of 1989.

2. Prima facie, in the wake of the accusations contained in the complaint, when it is read as it is, one fail to understand the basis for invocation of Section 3(1)(y), which is in relation to denial of customary right of passage to a place of public resort to a member of a scheduled caste or scheduled tribe or obstructing such a member, so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access. As far as allegations attracting Sections 3(1)(r) and 3(1)(s) are concerned, which punishes an act of intentional insult or intimidation with intent to humiliate a member of a scheduled caste or a scheduled tribe in any place within public view and for being abusive by calling him in the name of his caste, in any place within public view, they are attributed to Appellant No.1. Even these accusations, prima facie, are not intended to insult a particular individual, but according to the narration of the complainant, they were intended towards all the members of the community, who were present there. Whether the said accusations amounted to insult or intimidation to a particular individual, will have to be decided at the time of trial.

3. Another aspect of the matter is, the cross FIR which is lodged by one Sou.Kushali Sohoni, resident of the very same locality, in respect of the same incident, when she reported that while Holi was being celebrated and she was present there alongwith her family members and friends, she felt that somebody was pulling her apparel (dupatta). She ignored the said conduct, but later on realised that her apparel was actually pulled, and she noticed the accused persons, who were the residents of the same locality. One male member from the crowd came to her rescue and it is her version that the boys in the locality were made to understand not to indulge in such type of act, but this gave rise to a tiff between the two groups and her version is, abuses were hurled by the named accused persons, which include Aditya Dhangar, Bala Dhangar, Aryan Raut and 10 to 15 other persons.

4. When the learned A.P.P. is asked to reveal whether any injuries are sustained by any of the members, he invited my attention to a medical certificate of Aditya Dhangar, issued by a private hospital, which refer to one CLW over parietal region. No other injury certificates are on record, indicating that there are other persons, who have sustained injuries.

The learned A.P.P., on instructions of API H.M.Kulkarni attached to Badlapur Police Station, who is present in the Court, state that the investigation is on the verge of completion and the relevant material for the purpose of filing of charge-sheet has already been collected by the Investigating Officer.

In the aforesaid circumstances, though the Appellants may take the consequences of the charges levelled against

them at the time when they will face the trial, their further incarceration over a period of 35 days, is not necessary.

As far as Appellant No.2 is concerned, as per the complainant himself, he is not accused of committing the offences under Section 3(1)(r) and 3(1)(s) of the Act of 1989. In the wake of the above, I deem it appropriate to pass the following order.

: ORDER :

- (a) Appeal is allowed.
- (b) The impugned order dated 17/03/2023, rejecting the bail application of the Appellants, is quashed and set aside.
- (c) Appellant No.1-Dnyaneshwar Narayan Bhosle and Appellant No.2-Shirish @ Bala Baliram Lad shall be released on bail in connection with C.R.No.70 of 2023 registered with Badlapur Police Station, on furnishing P.R. Bond to the extent of Rs.25,000/- each, with one or two sureties in the like amount.

The Appellants shall be released on provisional cash bail of Rs.25,000/- each, for a period of four weeks from today and they shall arrange for the sureties during the said period.
- (d) The Appellants shall mark their attendance in the concerned police station, on first Monday of every trimester between 4 p.m. to 5 p.m.
- (e) The Appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade

him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the Appellants shall give their contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) On any incident being reported by a member of scheduled caste or a scheduled tribe, in respect of repetition of same conduct, in any form as provided under the Act of 1989 against the Appellants, the prosecution will be at liberty to seek cancellation of bail granted to them.

5. In view of the disposal of the Appeal, interim application does not survive and stands disposed off.

(SMT. BHARATI DANGRE, J.)