

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 389 OF 2023**

Dr. Dilip Kantilal Bora And Anr.

...Appellants

Versus

State Of Maharashtra And Anr.

...Respondents

WITH**CRIMINAL APPEAL NO. 390 OF 2023**

Nitin Kantilala Bora

...Appellants

Versus

State Of Maharashtra And Anr.

...Respondents

....

Mr. Tukaram Shendge Advocate for Appellant in both Appeal.

Mr. Yuvraj D. Newase for Respondent No.2 in both Appeals.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

IO. Dy.S.P. Bharde, Saswad Division, Pune, present.

T.V. Khade, Jejuri Police Station, present.

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CORAM : PRAKASH D.NAIK, J.**DATE : 9th JUNE, 2023.****PC.:-**

1. Both these Appeals preferred under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act challenging the orders dated 24th March 2023 passed by the learned Additional Sessions Judge, Pune rejecting the application for anticipatory bail.
2. The First Information Report is registered by Respondent No.2 vide

C.R. No.99 of 2023 for offences under Sections 323, 324, 504, 506 read with 34 of the Indian Penal Code and Sections 3(1)(r)(s), 3(2)(va) of SC and ST Act and Section 7(1)(d) of the Protection of Civil Right Act.

3. The complainant has referred to two incidents alleging that there were abuses on caste at the instance of the accused. However, the date of occurrence of the first incident has not been mentioned in the FIR. The second incident is dated 9th March 2023. It is alleged that, the appellant Nitin Kantilal Bora was at his shop. He came out of his shop with iron rod and gave blow on the right leg of the complainant. Appellant Dr.Dilip Kantilal Bora was armed with stick. He confronted the complainant by abusing him on his caste. The appellant No.3 Mina Dilip Bora also came to the spot of incident. She abused the complainant and others on the basis of caste. Akbar Sayyed and Vilas Dhaigade came to the spot and intervened in the quarrel.

4. Learned Advocate for the Applicant submitted that, there is dispute relating to the property between Appellant Nitin Bora and original landlord Smt. Shakuntala Jagtap. The landlord has provided power of attorney to the complainant in the present case. Civil Suit is filed in respect to the said dispute. Civil Court has granted interim injunction in favour of the appellants on 6th March 2023. The original landlord has filed caveat in this Court and in that caveat she has given reference of Vilas Dhaigade, who is one of the witness in this case. The alleged witnesses to the incident are

closely associated with the landlord and complainant. There are no independent witnesses. Bar under Section 18 would not be attracted. The alleged injuries suffered by the witnesses are simple in nature.

5. Learned APP submitted that the incident is witnessed by three persons whose statements are recorded. One of them has recorded the video of the incident dated 9th March 2023. The witnesses are independent. The first informant had suffered injuries on account of assault.

6. The Respondent No.2 has filed Affidavit-in-reply. The same is taken on record.

7. Learned Advocate for Respondent No.2 submitted that, interim injunction granted in respect to the property dispute as claimed by the learned Advocate for Appellants stands vacated. It was *ex-parte* order. The incident is supported by independent witnesses. Bar under Section 18 of the Act is attracted and hence application seeking anticipatory bail is not maintainable. The accused were involved in hurling abuses on caste against complainant. The offences under Atrocities Act as well as I.P.C. are clearly made out.

8. It appears, there is property dispute between the original landlord of the property and one of the appellant in the present case. During the course of investigation, statements of three persons were recorded. The witnesses has vaguely stated that all the persons have abused the victim on the basis of caste. The incident had occurred on 9th March 2023 at about 08:30 am

and the FIR was registered on 10th March 2023 at 22:37 pm. The names of the witnesses are referred to in the FIR. Name of Vilas Ghaigude has been reflected in the caveat filed by original landlord and he appears to be interested witnesses. Although, the statement of Nisar indicate that he has recorded video it is no specified that the video contains in the alleged abuses made by the accused. Apparently, the prosecution could not produce any panchnama with regard to the transcript/content of video and whether it contains the incident relating to abuse on caste. Considering the aforesaid circumstances, bar under Section 18 of the Act would not be an impediment to grant anticipatory bail to the Appellants.

ORDER

- (i) Appeal Nos. 389 of 2023 and 390 of 2023 are allowed;
- (ii) Impugned orders dated 24th March 2023 passed by the learned Additional Sessions Judge, Pune in Criminal Bail Application Nos. 1839 of 2023 and 1840 of 2023 are set aside.
- (iii) In the event of arrest of appellants in C.R. No. 99 of 2023 dated 10th March 2023 registered with Jejuri Police Station, Pune Rural, they be released on bail on furnishing P. R. Bond in the sum of Rs.20,000/- each with one more sureties in the like amount.
- (iv) The appellants shall appear before the Investigating Officer on 14th 15th and 16th June 2023 between 11:00 am to 02:00 pm and therefore as and when called for.

- (v) The appellants shall not tamper with the evidence and shall co-operate with the investigation.
- (vi) Both Appeals stand disposed off.

(PRAKASH D. NAIK, J.)