

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

CRIMINAL APPEAL NO.270 OF 2021

Santosh Dattaram Chavan & Ors. Appellants
versus
State of Maharashtra & Anr. Respondents

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- Mr. Saurabh Butala Advocate for Appellants.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.
- Ms. Gayatri Gokhale (Appointed) Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 11th JANUARY, 2023

P.C. :

1. The Appellants are challenging the Judgment and Order dated 08/09/2020 passed by the Special Judge under the SCST Act, Greater Mumbai, in Criminal Anticipatory Bail Application No.884 of 2020. In effect, the Appellants are seeking anticipatory bail in connection with C.R.No.244/2020 registered at Navghar police station on 06/08/2020 u/s 324, 504, 506 r/w 34 of the Indian Penal Code and u/s 3(1)(r), 3(1)(s)(za)A of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short 'Atrocities Act'). The Appellant

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Nos.1 and 2 are the husband and wife. The Appellant No.3 is their daughter.

2. Heard Mr. Saurabh Butala, learned counsel for the Appellants, Ms. Gayatri Gokhale, learned counsel for the Respondent No.2 and Mr. S. R. Agarkar, learned APP for the State.

3. The FIR is lodged by the Respondent No.2. He has stated that his family and the Appellant's family were residing in the neighbourhood. They were having some dispute about the access road to the Respondent No.2's house. There is reference to some utterance in January 2020 with reference to caste. But the main subject matter of this FIR is the incident dated 10/06/2020. The FIR mentions that, on that date, at about 02.00 p.m. there was some incident. Appellant No.2, alleged that the Respondent No.2 had damaged her flower-pots. At about 06.30 p.m. the Respondent No.2 was sitting outside his house, again the Appellant No.2 started abusing. The Respondent No.2 asked her to stop. It is alleged that the

Appellant No.2 abused him with reference to his caste. In the meantime, the other two Appellants came there. They also abused him with reference to caste. It is alleged that the Appellants assaulted the Respondent No.2 and his daughter with stick. According to him he had gone to Navghar police station to lodge a complaint. But since other Residents pacified him, he did not lodge his FIR. In the meantime the Appellants had lodged their FIR on 17/06/2020. It is further alleged that on 26/07/2020, the Appellant No.2 poured dirty water on the Respondent No.2's daughter. Therefore, finally he lodged his FIR.

4. Learned counsel for the Appellants submitted that this FIR is counterblast to the FIR lodged by the Appellant No.2. He invited my attention to the NC complaint and the FIR registered at the instance of the Appellant No.2. The NC was lodged immediately on 10/06/2020 after the incident. It was lodged by the Appellant No.2 against the Respondent No.2. After that, the Appellant No.2 lodged an FIR vide C.R.No.126/2020 at Navghar Police Station on 17/06/2020 u/s 324, 504, 506 r/w 34 of the

Indian Penal Code. The FIR mentions the same incident, in which the Appellant No.2 was assaulted and abused. After this FIR, an NC was lodged by the Respondent No.2's daughter on 18/06/2020 in respect of the same incident dated 10/06/2020. In that NC, there was no reference to the abuses with reference to caste. In any case that NC is lodged only against the Appellant Nos.1 and 3. The FIR against the Appellants makes allegations that the abuses were given by the Appellant No.2 but the NC is not even lodged against the Appellant No.2.

5. After this NC a complaint was given on 18/06/2020 about the same incident dated 10/06/2020. As mentioned in the FIR, this complaint was not pursued and it is mentioned that a false FIR was lodged against the Respondent No.2. Ultimately he lodged the FIR on 06/08/2020. Learned counsel for the Appellants submitted that all this shows that the FIR is lodged as an afterthought and a counterblast to the FIR lodged by the Respondent No.2. The FIR shows that the Appellant No.2 had suffered some injuries and there is absolutely no reference to

such injuries to the Appellant No.2. In the FIR lodged against her, which shows that the Respondent No.2 has suppressed the important facts.

6. Learned APP as well as learned counsel for Respondent No.2 opposed this application. They submitted that offence under the Atrocities Act is made out and therefore the bar u/s 18 of the said Atrocities Act will operate and anticipatory cannot be granted to the Appellants.
7. Learned counsel for the Respondent No.2 submitted that the FIR was not restricted to the incident dated 10/06/2020 but there was a reference to an incident dated 26/07/2020 when the Appellant No.2 had allegedly poured dirty water on the Respondent No.2's daughter.
8. Learned APP produced the investigation papers which contained the statements of Joel, Mukesh Badgujar and Raju Patil recorded respectively on 14/08/2020, 15/08/2020 and 20/08/2020. Joel was a chance witness and he has attributed

abuses only to the Appellant No.3. The other witness Mukesh Badgujar has not referred to the incident dated 10/06/2020. Raju Patil has again attributed abuses only to the Appellant No.3. However, all these statements are recorded much belatedly in August 2020. They also do not make any reference to the injuries suffered by the Appellant No.2. The investigation shows that the Respondent No.2's daughter had suffered one abrasion on forearm and the Respondent No.2 has suffered contusion and small swelling over the right leg.

9. I have considered these submissions. Apparently there was a scuffle between the two groups in which both the parties have suffered some injuries. The FIR against the Appellants does not make any reference as to how the Appellant No.2 had suffered injuries. The injury certificate shows that the Appellant No.2 had suffered one abrasion on left side of the forehead of the size 2 x 1 cm. There was one contusion over the left arm of the size 4 x 2 cm and there was redness on the right forearm of the size 3 x 2 cm. These injuries were caused during the same

incident for which a separate FIR is lodged by the Appellant No.2. Thus, the Respondent No.2 has suppressed some important facts in his FIR.

10. This has to be seen in the background of the NC lodged by the Respondent No.2's daughter on 18/06/2020 about the same incident. All these important allegations in the FIR regarding the same incident are not mentioned in that particular NC. The FIR itself was lodged belatedly on 06/08/2020. Though there was some complaint made by the Respondent No.2 on 20/06/2020 even that first complaint to the police was made after the NC dated 18/06/2020 was lodged by the Respondent No.2' daughter. Thus, there is scope to believe that the allegations in the FIR are result of the grudge which the Respondent No.2 was holding against the Appellants and there is exaggeration about the important aspects. The Respondent No.2 has suppressed the cause of injuries suffered by the Appellant No.2. Therefore in this background, reasonable doubt is created about the case of the Respondent No.2. Therefore it

would not be fair to deny relief of anticipatory bail to the Appellants. All these questions can be decided during the course of the trial. It is made clear that all these observations are restricted to passing of this order and these observations shall not be used at any other stage.

11. Hence, the following order :

ORDER

- (i) The Appeal is allowed.
- (ii) In the event of their arrest in connection with C.R.No.244/2020 registered at Navghar police station, the Appellants are directed to be released on bail on their furnishing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only) each, with one or two sureties each, in the like amount.
- (iii) The Appeal stands disposed of accordingly.

(SARANG V. KOTWAL, J.)