

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

CRIMINAL APPEAL NO. 645 OF 2023

1. Nayan Subhash Vekhande
2. Amar Subhash Vekhande
3. Devidas Parshuram Bangar ..Appellants

Versus

1. The State of Maharashtra
2. Jayram Namdev Gawari ...Respondents

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Mr. Shekhar Ingawale, Advocate for the Appellants.

Mr. Shailesh Kharat, Advocate for Respondent No.2.

Mrs. Anamika Malhotra, APP for the Respondent No.1 – State.

Mr. Vikas S. Nikam (I.O.) Vashind Police Station, Thane (Rural) Present.

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

PER COURT:

1. The Appellants have challenged the order dated 05.12.2022 passed by the learned Additional Sessions Judge, Kalyan rejecting their application for anticipatory bail.

2. The Appellants are apprehending arrest in connection with C.R. No.149 of 2022 registered with Shahapur Police Station, Dist. Thane (Rural) for offences punishable under Sections 392, 324, 143, 147, 148, 149, 504 & 506 of Indian Penal Code (for short “IPC”) and Sections 3(1)(k)(s)(r) of the Scheduled Caste and

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST (Prevention of Atrocities) Act”).

3. The case of the prosecution is that, on 05.11.2022, the informant received a telephonic call of his cousin informing that he is assaulted and abused by the accused Nayan Vekhande and he should immediately reach the spot. Accordingly the informant reached the spot and saw that, Nayan Vekhande and others were assaulting his cousin. The informant and his brother tried to intervene to rescue their cousin, however, the accused threatened them and abused them on the basis of their caste. Accused Devidas Bangar snatched the gold chain from the neck of the informant. The first informant had suffered injuries. The FIR was registered on 09.11.2022.

4. Learned Advocate for the Appellants submitted that the Appellants are falsely implicated in this case. There is delay in lodging FIR. The witnesses are interested. The allegations about the abuses on the caste are vague. The other villagers had lodged the complaint against the first informant about threats. False allegations are made under the Atrocities act. The co-accused had preferred an appeal before this Court seeking pre-arrest bail which has been allowed vide order dated 21.03.2023.

5. Learned A.P.P. submitted that, specific role has been attributed to the Appellants. The complainant had suffered injuries. He was hospitalized. Reliance is place on the injury certificate. The delay in lodging FIR is on account of the treatment given to the complainant. Statements of independent persons were recorded during the course of investigation. There is bar under Section 18 of the Atrocities Act.

6. Learned Advocate for the Respondent No.2/Complainant submitted that the Appellants were actively involved in the incident of abuses on caste. The role of Appellant Nos.1 & 2 can be distinguished from the fact that they had indulged in act of spitting on the complainant. The Appellant No.3 took away the gold chain of complainant.

7. Although the incident had occurred on 05.11.2022, the FIR was registered on 09.11.2022. The first informant has referred to involvement of several persons in the incident of assault and abuses on caste. While allowing the Appeal preferred by co-accused, this Court had observed that the allegations levelled are collective and lack specification as to who uttered the caste abuses, which could have attracted Sections 3(1)(s) and 3(1)(r) of the SC/ST (Prevention of Atrocities) Act. The complaint also falls short of

making out an intention on the part of the Appellants to insult or intimidate the complainant and others with an intention to humiliate them within public view. The bar under Section 18 of the Atrocities Act would not be attracted. Reference is also made to the counter FIR registered with the same police Station at the instance of appellant No.2.

8. The observations made in the aforesaid order is also be applicable to the Appellants. The appellants No.2 has registered an FIR with the same Police Station which is referred to herein above on 12.11.2022 for offences under Sections 324, 323, 143, 147, 148, 149, 504, 506 & 427 of IPC against the first informant and 13 other persons. The Appellants have annexed the medical case papers with regards to treatment given to injured which indicates that the Appellant No.1 had suffered abrasion on chest, lacerated wound on hand (palm) with blunt trauma on head and lacerated wound on toe. The appellant No.1 is student and appellant No.2 is working as Postman in the Post Department. It is not reported that there are criminal antecedents against the Appellants. The allegations of robbery is exaggerated version.

9. Considering the factual aspects, the bar under Section 18 of the Atrocities Act would not be an impediment to grant relief to the Appellants.

ORDER

- i. Criminal Appeal No. 645 of 2023 is allowed;
- ii. The impugned order dated order dated 05.12.2022 passed by the learned Additional Sessions Judge, Kalyan in Anticipatory Bail Application No.2245 of 2022 is quashed and set-aside.
- iii. In the event of arrest of the Appellants in connection with C.R. No.149 of 2022 registered with Shahapur Police Station, Dist. Thane (Rural) 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 attend the Investigating Officer on 20th, 21st & 22nd June, 2023 between 11.00 a.m. to 1.00 noon and thereafter as and when called for.
- v. Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)