

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

CRIMINAL APPEAL NO.467 OF 2021

Shivdas Maruti Patil & Anr. Appellants

versus

State of Maharashtra & Anr. Respondents

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- Mr. Viresh V. Purwant, Advocate for Appellants.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.
- Mr. Vishal Patil (Appointed) Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 21st FEBRUARY, 2023

P.C. :

1. The Appellant has challenged the order dated 10/05/2021 passed in Criminal Bail Application No.1401 of 2021, by the Additional Sessions Judge, Thane. The Appellant No.1 is the father of the Appellant No.2. In effect they are seeking anticipatory bail in connection with C.R. No.40/2021 dated 14/02/2021 registered with Mumbra Police Station, u/s 323, 504, 506 r/w 34 of the Indian Penal Code. The offence u/s 3(x) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act'), was applied. Subsequently it was corrected to section 3(1)(r), 3(1)(s), 3(2)(v-a) of the Atrocities Act.

2. Heard Mr. Viresh V. Purwant, learned counsel for the Appellants, Mr. S. R. Agarkar, 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. She has stated that on 08/01/2021 at about 08.30 p.m. her younger son Nilesh informed her that a quarrel was going on between the Respondent No.2's elder son Nitesh and the Appellant No.1. The Respondent No.2 went there to intervene. It is alleged that the Appellants abused her with reference to the caste. The Appellants started assaulting Nitesh. The Respondent No.2 tried to hold the Appellant No.1's hand. At that time he kicked her in her stomach and assaulted her with kicks and fist blows. The Appellant No.2 assaulted Nitesh and Nilesh with kicks and fist blows. The Appellants then took Nilesh to police chowky. The

Respondent No.2 has alleged that she became unconscious and when she regained her consciousness at that time she found herself in a hospital. Nitesh was with her. On this basis, the FIR is lodged.

4. Learned counsel for the Appellants submitted that the incident had allegedly taken place on 08/01/2021 and the FIR was lodged on 14/01/2021. There is unexplained delay in lodging the FIR. He submitted that the Appellant No.1 had lodged his own FIR vide C.R.No.20/2021 at the same Mumbra police station on 09/01/2021 at about 03.27 a.m. u/s 324, 323, 504 r/w 34 of the Indian Penal Code and u/s 4 and 25 of the Indian Arms Act against Nileshe and his brother. As a counterblast to this FIR, the Respondent No.2 had belatedly lodged the FIR against the Appellant. The Appellant No.1 himself was assaulted with chopper. He had suffered injuries all over his body. He therefore submitted that the allegations in the FIR lodged against the Appellants are not true and they deserve the protection of anticipatory bail.

5. Learned counsel for Respondent No.2 submitted that the offence is clearly spelt out in the FIR itself and therefore considering the bar u/s 18 of the Atrocities Act, anticipatory bail cannot be granted to the Appellants.
6. Learned APP produced investigation papers in respect of both these offences i.e. C.R.No.40/2021 and C.R.No.20/2021. I have perused these papers. The investigation of C.R.No.20/2021 shows that the Appellant No.1 has suffered five injuries. The first injury was on the head on frontal prominence of size 2 cm x 1 cm x 1 cm. Those injuries are described as simple. His own FIR is in respect of assault caused to him. The Respondent No.2 has not made any reference to the injuries caused to the Appellant No.1, when she had described the incident in her own FIR dated 14/01/2021. The Respondent No.2 on the other hand has suffered three injuries herself, the first injury was blunt trauma to head, groin and abdomen. Other injuries were in the nature of contusion and abrasion. Thus, it

appears that there was some altercation between the two groups. There is scope to believe that the Respondent No.2 has not mentioned the true story. However, at this stage, it would not be proper to comment anything conclusively on this aspect. Suffice it to say that, a reasonable doubt is created about the prosecution case against the Appellants. The incident is old, it had allegedly taken place in January 2021. Two years have passed.

7. Considering all these aspects, the Appellants can be granted protection of anticipatory bail.

8. Hence, the following order :

ORDER

(i) The Appeal is allowed.

(ii) In the event of their arrest in connection with C.R. No.40/2021 dated 14/02/2021 registered with Mumbra 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 is disposed of.

(SARANG V. KOTWAL, J.)