

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

CRIMINAL APPEAL NO. 319 OF 2021

Anand Datta Mhatre And Ors. ...Appellants

Versus

The State Of Maharashtra And Anr. ...Respondent

....

Mr. Padam Kumar Jalan i/by Mr. Rohan A. Waghmare, Advocate for the Appellant.

Mr. Omneel Jadhav, Advocate for Respondent No.2.

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

Mr. Narayan Dalvi, PSI, Vileparle Police Station, Mumbai.

CORAM : PRAKASH D. NAIK, J.

DATE : 30th JUNE, 2023.

PER COURT:

1. This is an appeal under Section 14-A of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act'). The Appellants have challenged the order dated 29th June, 2020 passed by learned Additional Sessions Judge Borivali, Division Dindoshi, Mumbai rejecting the application for anticipatory bail preferred by Appellants.

2. The Appellants are apprehending arrest in connection with C.R. No.224 of 2020 registered with Vileparle Police Station for offences under Section 141, 142, 143, 147, 354, 504, 506, 323 of Indian Penal Code and Section 3(i)(w)(i)(ii), 3(i)(r)(s) of SC and

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ST Act. The First Information Report (for short 'FIR') registered by Respondent No.2 on 1st June, 2020.

3. This Court vide order dated 2nd November, 2022 granted interim relief to the Appellants with direction to report Investigating Officer of concerned Police Station on 9th November, 2020 and 10th November, 2020.

4. Learned APP on instructions submitted that the interim order passed by this Court was executed and the bail bond was furnished by the Appellants. On completing investigation charge-sheet is filed.

5. The case of the prosecution is that on 30th May, 2020 the sister of complainant was assaulted by Appellant No.3. The complainant and others intervened. The Appellant No.4 came to the spot and assaulted complainant. Appellant No.1 abused and assaulted one of the witness. The brother-in-law of complainant namely Rampal @ Nitin More intervened in the quarrel. He was assaulted by Appellant Nos. 1 and 4. Police came to the spot. The complainant visited Vileparle Police Station and lodged the complaint about assault against Pragati Mhatre, Anand Mhatre and Bharti Mhatre. Non-cognizable complaint was registered bearing No.362 of 2020 and under Sections 323, 504 and 506 of IPC. It is

further alleged that during the quarrel the gown of the complainant was torned and thereby Accused had outraged her modesty. The Accused had abused the complainant and others on their caste and therefore, the complainant again approached Vileparle Police Station and lodged the FIR.

6. It is also apparent that FIR was registered at the instance of Appellant No.3 with the same Police Station vide C.R. No.223 of 2020 on 1st June, 2020 for offences under Section 141, 142, 143, 147,354, 323, 504 and 506 of IPC. The FIR was lodged against Sangita Awhad, Umesh Awhad, Geeta More, Rampal @ Nitin More and sisters of Sangita More. Prior to the registration of FIR, N.C. complaint was lodged by Appellant No.3 against the aforesaid persons under Sections 323, 504 and 506 of IPC.

7. Learned Advocate for Appellant submitted that FIR has been registered with *mala fides*. It is counter blast to the FIR lodged by one of the Appellant. Prior to registration of FIR, N.C. complaint was registered. He did not refer to the allegations of outraging modesty or abuses on caste. The Appellants had complied with directions of this Court stipulated in order dated 2nd November, 2022 and attended the Investigating Officer.

8. Learned APP and learned Advocate for Respondent No.2

submitted that the FIR refers to the abuses on caste in view of bar under Section 18 of the SC and ST Act the Appellants are not entitled for anticipatory bail. The incident of abuses on caste is supported by statements of independent witnesses.

9. The investigation is completed and charge-sheet has been filed. Interim order granted by this Court has been executed. The record indicates that FIR was registered by Appellant No.3 vide C.R. No.223 of 2020 against the present complainant and others for the offences as stated hereinabove. It is pertinent to note that prior registration of FIR, the complainant in the present case had lodged the complaint before same Police Station which was stated as non-cognizable complaint. The offences were registered under Section 323, 504 and 506 of IPC. The said complaint only refers to the quarrel between both sides and assault by hand. The allegations of outraging modesty or abuses on caste are completely absent in the said complaint. It appears that pursuant to the registration of the FIR by Appellants the present appeal has been registered. The FIR suffers from *mala fides*. In the light of factual aspects of this matter, the bar under Section 18 of the Atrocities Act would not be attracted and impediment to grant relief to the Appellants.

ORDER

- i. Criminal Appeal No.319 of 2021 is allowed;
- ii. Order dated 29th June, 2020 passed by Additional Sessions Judge, Dindoshi Mumbai rejecting the application for anticipatory bail is set aside.
- iii. Interim order dated 2nd November, 2020 is confirmed.
- iv. In the event of arrest, the Appellants in connection with C.R. No.224 of 2020, the Appellants be enlarged on bail on furnishing PR. Bond in the sum of Rs.15,000/- each, with one or two sureties in the like amount;
- v. Appeal stands disposed off.

(PRAKASH D. NAIK, J.)