

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

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APPEAL NO. 517 OF 2023

Asgar Mosin Khot and anr. ..Appellants
VS.
The State of Maharashtra and anr. ..Respondents

Mr. Gaurav Parkar, for the Appellants.
Ms. P. N. Dabholkar, APP for the State.
Mr. Ganesh Gupta, for Respondent No.2.
Police Constable Mr. Sandip Narute, Sub-Divisional Police Officer
Office, Karjat present.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 9, 2023

P.C. :

- 1.** Heard learned counsel for the appellants, learned APP and learned counsel for respondent no. 2.
- 2.** The appellants are apprehending arrest in connection with C.R. No. 61 of 2023 registered with the Neral Police Station for offence punishable under Sections 323, 294, 504, 506 read with 34 of Indian Penal Code, 1860 and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The FIR is lodged on 06/03/2023. The assault and abuse is on

caste by the appellants as alleged by the complainant – respondent no. 2 was on 04/03/2023. Learned counsel for respondent no. 2 submitted that on the very same day, the complainant had visited the Police Station but the FIR was not registered. The FIR was registered only on 06/03/2023. Prima facie, I find that there is delay in registering the FIR. Even according to the stand of the complainant-respondent no. 2, the FIR was lodged after deliberation with the workers of the Adivasi Sanghatana.

3. My attention is invited to the communication dated 16/06/2022 at page 27 of the paper-book addressed to the appellant no. 1 informing him that the respondent no.2 has not submitted papers for caste validity certificate. It is the contention of learned counsel for the appellants that there exists a political rivalry between the appellants and respondent no.2. The complainant is a member of the gram panchayat. According to learned counsel for the appellants, the respondent no.2 did not like the appellants' seeking information from the competent authority as to whether the respondent no. 2 had submitted the caste validity certificate or not. Apart from delay in lodging the FIR, there appears to be some political rivalry between the appellants and the respondent no.2.

4. Learned counsel for the respondent no.2 urged that the incident is happened in full public view and supported by the independent witnesses. So far as one of the witness is concerned, it is submitted by learned counsel for the appellants that the member of the political group which the appellants belong has filed an appeal against the witness- Jabir Annis Naze under the provisions of the Maharashtra Village Panchayat 1958 for disqualification as a member of the panchayat. Learned counsel for the appellants relied upon the decision of this Court in ¹**Jagdish Sajjankumar Banka Vs. State of Maharashtra and anr. AND Satish Sajjankumar Banka Vs. State of Maharashtra and anr.** to contend that if FIR smacks malafides and in the past there are disputes between the parties, these circumstances have to be taken into consideration. In my opinion, the circumstances in the present case are such that the relief of anticipatory bail needs to be granted to the appellants by observing that the bar under Section 18 of Atrocities Act cannot be attracted in the present case. In the light of the observations made hereinabove, I am of the considered opinion that the bar under Section 18 of the Atrocities Act cannot be invoked against the appellants in the present case for depriving them the facility of pre-arrest bail. The custodial

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interrogation of the appellants is not necessary.

- 5.** In this view of the matter, the appeal is allowed.
- 6.** The impugned order is set aside.
- 7.** The interim order dated 19/06/2023 is confirmed.
- 8.** The appellants to co-operate with the investigation; however it is made clear that for a period of 3 months from today, the appellants shall reside outside the jurisdiction of Neral Police Station.
- 9.** So far as the complaint made by the complainant that the appellants are harassing them is concerned, the same shall obviously be considered by the concerned on its own merits.

(M. S. KARNIK, J.)