

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

CRIMINAL WRIT PETITION NO. 1901 OF 2023

Rajkumari Purshottam Khinchi & Ors.

..Petitioners

Versus

State of Maharashtra & Anr.

..Respondents

Mr. Balkrishna Joshi for Petitioners.

Mr. N. B. Patil, APP for State/Respondent No.1.

Mr. Jitendra Oak for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 7 JUNE 2023

PC :

1. Learned Advocate Shri. Jitendra Oak seeks liberty to file his Vakilpatra on behalf of the Respondent No.2 during the course of the day. Permission is granted.

2. Heard Shri. Balkrishna Joshi, learned counsel for the Petitioners, Shri. Patil, learned APP for the State/Respondent No.1 and Shri. Jitendra Oak, learned counsel for the Respondent No.2.

3. The Petitioners have prayed for quashing and setting aside the order dated 15/03/2023 issuing Non Bailable Warrant (N.B.W.) against the Petitioners. The Petitioner Nos.1 and 4 are the

parents of the Respondent No.2's wife. The other Petitioners are their relatives.

4. The F.I.R. in this case was lodged by the Respondent No.2's father under the provisions of Section 3(1)(ix), 3(1)(x) and 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, U/s.143, 504 and 506(II) of the I.P.C. and U/s.7(1)(d) of the Protection of Civil Rights Act. The investigation was carried out, the charge-sheet is filed and the case is pending before the Additional Sessions Judge, Kalyan. All the Petitioners are the six accused before the said Court.

5. During the pendency of this proceeding the original first informant i.e. the father of the Respondent No.2 passed away. The evidence of PW-1, who is brother of the Respondent No.2, was recorded and he was declared hostile. He did not support the prosecution case.

6. Learned counsel for the Petitioners and the Respondent No.2 jointly make a statement that the dispute between the parties i.e. between the two families has been amicably settled. The

Respondent No.2's wife is present in the Court and she is identified by both learned counsel. She is also supporting the Petitioners.

7. In this background, since the case was pending for a long time and since the accused/Petitioners did not appear before the Trial Court, learned Trial Judge issued N.B.W. against all the Petitioners/accused vide order dated 15/03/2023. The N.B.W. was executed against the Petitioner Nos.4, 5 and 6 and as of today they are in Judicial custody. The warrant is not yet executed against the Petitioner Nos.1, 2 and 3.

8. Learned APP submitted that the Petitioner Nos.4, 5 & 6 have already preferred a bail application before the Trial Court and that it would be proper if that bail application is decided in stead of granting them relief here in this petition.

9. I have considered these submissions. At the outset, it must be noted that, both learned counsel for the parties have stated that the dispute between the families has been resolved which is also evident from the fact that the Respondent No.2's brother did not support the prosecution case. The first informant

has passed away. The Petitioner No.4 is 66 years of age and the Petitioner No.5 is 70 years of age. Therefore, in the interest of justice, though, their bail application is pending before the Trial Court, I am considering their prayers in the present petition. It needs to be noted that, though the bail application is pending, learned Trial Judge has passed an order dated 31/05/2023 mentioning that the said bail application be placed for hearing after the appearance of remaining two accused who were still absconding. However, in my opinion, though at the first instance the Trial Judge was justified in issuing N.B.W. against the Petitioners, as they were not present before the Trial Court on some occasions, the order dated 31/05/2023 is not justified. The bail application of the arrested accused cannot depend on the availability of the other accused and the arrested accused cannot be held as assurance for presence of the absconding accused. As mentioned earlier, the Petitioner Nos.4 and 5 are senior citizens and they deserve immediate protection. This has to be looked into the background of the statement regarding resolution of disputes made by both the learned counsel. The statement is solemnly

made across the bar and it is accepted in good faith. Therefore, in the interest of both the families and in the interest of the Respondent No.2 and his wife, it is necessary that the relief asked for in this petition is granted to the petitioners to serve the cause of justice U/s.482 of the Cr.p.c. Learned counsel for the Petitioners states that the Petitioners shall attend every date before the Trial Court henceforth. That statement is also recorded and accepted as an undertaking to the Court. In view of this discussion, I am inclined to grant relief to the Petitioners.

10. Hence, the following order:

O R D E R

- i) The Non Bailable Warrant issued pursuant to the order passed by learned Additional Sessions Judge, Kalyan on 15/03/2023, which is yet to be executed against the Petitioner Nos.1, 2 and 3, is set aside.
- ii) The Petitioner Nos.4, 5 and 6 are directed to be released on bail on their executing P. R. Bond each

in the sum of Rs.10000/-.

iii) The Petitioners shall attend every date before the Trial Court unless exempted by the said Court.

iv) With these observations, the petition is disposed of.

(SARANG V. KOTWAL, J.)