

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

CRIMINAL APPEAL NO.1065 OF 2019

1. Tapas Sadan Chakraborty, &
2. Netai Sital Patra

..... Appellants

Versus

The State of Maharashtra
and another

.... Respondents

Mr. Murtuza Nazmi, Advocate a/w. Shambhu M. Jha, Akash
Sharma, Kanai Biswas for the Appellants.

Mr. S.R. Agarkar, APP for the Respondent No.1-State.

Mr. Vaibhav R. Gaikwad, Advocate for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 02nd JANUARY, 2023

P.C. :

1. The appellants have challenged the order dated 6.2.2018 passed by the Additional Sessions Judge, Thane in ABA No.285/2018. By the impugned order, the appellants' anticipatory bail application was rejected. In effect, the appellants are seeking anticipatory bail in connection with C.R. No.155/2018 registered at Navghar police station, Thane dated 12.4.2018 under Sections 323, 504 read with 34 of the Indian Penal Code. Initially, the FIR was also

lodged under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Atrocities Act'). Now because of the amendment in the Atrocities Act, Section 3(1)(r) of the Atrocities Act is applied.

2. Heard Mr. Murtuza Nazmi, the learned counsel for the appellants, Mr. S.R. Agarkar, the learned APP for the respondent No.1-State and Mr. Vaibhav Gaikwad, the learned counsel for the respondent No.2.

3. The FIR is lodged by the respondent No.2. He has stated that the appellant No.1 is his next door neighbour. The appellant No.2 is also residing in the same building. It is alleged that both the appellants used to pass derogatory remarks with reference to his caste. The FIR is in respect of the particular incident which has taken place on 20.1.2018 at about 11.00 p.m.. It is alleged that on 22.1.2018, a religious ceremony was arranged behind their building. For that purpose many visitors were visiting the appellant No.1's house. They used to remove their foot-wear opposite the

informant's house. The informant had pointed it out to the appellant No.1, but, he did not pay any heed. At about 11.00 p.m. on that night, the informant's mother had pushed those foot-wear away from their door. Both the appellants and their family members got angry. It is alleged that both the appellants abused him with reference to his caste. It is also alleged that both the appellants then gave fist blows to the family members of the informant. It is further alleged that on 22.1.2018 also the informant was assaulted by both the appellants behind their building where the pooja was to be performed. On this basis, the FIR was lodged.

4. Learned counsel for the appellants submitted that prior to lodging of the FIR, the informant had given a complaint to the police on 22.1.2018. In that complaint, there are no allegations that the appellants had abused the informant with reference to his caste. The only allegations are that they uttered words which were hurtful. It is also alleged in that complaint that the appellants had attempted to assault the informant's wife and mother. There are

allegations that the informant and others were also beaten.

5. He submitted that as far as the incident dated 22.1.2018 is concerned, in that particular complaint it was mentioned that the appellants had instigated their friends to assault the informant meaning thereby that the appellants had not assaulted him but their companions had assaulted.

6. According to the learned counsel for the appellants these contradictions are irreconcilable and, therefore, there is a strong possibility of exaggeration. He further submitted that the informant's sister had lodged a complaint of her own on 22.1.2018 in respect of the separate incident but there was no reference to the incident dated 20.1.2018.

7. He further submitted that the appellant No.2's wife had lodged her own FIR on 24.1.2018 about outraging of her modesty by the informant. He, therefore, submitted that the appellants are falsely implicated.

8. The learned counsel for the respondent No.2

submitted that the harassment was going on for some time and ultimately the respondent No.2 had to leave that society and at present he is residing elsewhere which shows that he is continuously harassed by the appellants.

9. He submitted that the informant had immediately approached the police and, therefore, there was no delay in making his grievance to the police.

10. He further submitted that the contradictions pointed out by the learned counsel for the appellants can only be considered at the stage of trial and not at this stage.

11. The learned APP produced the investigation papers before me. There is a statement of one Shakuntala recorded on 13.4.2018 in which she has supported the case of the respondent No.2 herein. However, there is a statement of one Rajendra Sharma who has supported the case of the informant.

12. I have considered all these submissions. Rajendra Sharma's statement was recorded much belatedly on

27.9.2019. Shakuntala has supported the informant's case. However, it does appear that the main contention between the parties is their strained relationship. The quarrels were going-on on some petty issues. There are allegations and counter-allegations.

13. In the complaint made to the police on 22.1.2018 made by the respondent No.2 herein there are no specific allegations that both the appellants had abused him with reference to his caste. Though there are allegations that his family members were assaulted, there is no supporting injury certificates.

14. There are no statements of eye witnesses supporting the theory of assault. Shakuntala has only spoken about the quarrel and pushing and shoving. Beyond that, there is no reference to any assault.

15. As discussed earlier, the first complaint does not mention that the informant or his family members were abused with reference to their caste on 20.1.2018. As far as

the incident dated 22.1.2018 is concerned, in the complaint given to the police on 22.1.2018 the informant has made a grievance that at the instance of the appellants their companions had assaulted him. That description is different from his allegations in the FIR. Thus there is a possibility of exaggeration and false implication. However, all this is a matter of evidence and trial. Today, I am only considering grant of anticipatory bail. The incident is old. Almost five years have passed.

16. As discussed earlier, there are strong circumstances in favour of the appellants. Therefore, the relief of anticipatory bail can be granted to them. There is a possibility that the allegations are exaggerated and hence the offence under the Atrocities Act may not be attracted.

17. It is made clear that all these observations are made only for passing of this order. The trial Court shall not be influenced by the observations made in this order.

18. Hence, the following order :

:: O R D E R ::

- i. The appeal is allowed.
- ii. In the event of their arrest in connection with C.R. No.155/2018 registered at Navghar police station, Thane the appellants are directed to be released on bail on their furnishing P.R. bonds in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each with one or two sureties each in the like amount.
- iii. Criminal Appeal is disposed of accordingly.

(SARANG V. KOTWAL, J.)

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