

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

CRIMINAL APPEAL NO. 932 OF 2021

Vishal @ Yuvraj Shivaji Shinde

..Appellant.

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Aniket Nikam a/w. Aashish Satpute a/w. Piyush Toshnival a/w.
Mr. Amit Icham for Appellant.

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

Mr. Vaibhav R. Gaikwad a/w. Atharva R. Bhingardev for
Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 13 FEBRUARY 2023

PC :

1. The Appellant has challenged the order dated 28/10/2021 passed by learned Additional Sessions Judge, Sangli, in Criminal Bail Application No. 1217 of 2021. In effect, the Appellant is seeking anticipatory bail in connection with C.R.No.468 of 2021 registered at Vita police station, District Sangli, on 19/10/2021, under sections 323, 427, 504 and 506 r/w. 34 of the I.P.C. and under sections 3(1)(r) and 3(2)(va) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act').

2. Heard Shri. Aniket Nikam, learned counsel for the Appellant, Shri. Agarkar, learned APP for the State/Respondent No.1 and Shri. Vaibhav Gaikwad, learned counsel for the Respondent No.2.

3. The F.I.R. is lodged by the Respondent No.2. He has stated in his F.I.R. that his mother Kalabai had an ancestral land at Vita Lengre road. The Respondent No.2's mother's name was included in the revenue record along with her sister and brother. The respondent No.2 was knowing the present appellant, as well as, other accused Amit @ Bablu Kashid and Ashok Bhingardev. The Respondent No.2's mother wanted to build a small house in her share of the property. The Gut number mentioned in the F.I.R. is 71/7/c/6 in that village.

4. On 11/10/2021, the Respondent No.2 and his mother had gone to that place to put up the compound. At around 4.00p.m. on 11/10/2021, the Respondent No.2 was cleaning that

place. His mother was sitting nearby. At that time, the Appellant and the aforementioned two persons came there. They threatened the Respondent No.2 and removed the rods which he had put there for erecting the compound. They removed those rods and destroyed other articles. When the Respondent No.2 tried to stop them, it is alleged that the appellant abused him with reference to the caste and also threatened him. The appellant was supported by Ashok Bhingardev and others. The Respondent No.2 was assaulted with kicks and fist blows. After that the Respondent No.2 went home with his mother. In the night, because of the threats, he was under fear, therefore, he went to reside with his relative Kiran Bhingardev. At about 1.30a.m. in the same night, the Appellant and Amit Kashid came in front of that house. They were under influence of alcohol. They were kicking on the gate of the house. They were uttering abusive words with reference to the caste and also threatened the Respondent No.2. The Respondent No.2 stated that, because of those threats, he was under fear and, therefore, did not lodge the F.I.R. immediately. However, on these allegations, the F.I.R. was lodged on 19/10/2021.

5. Learned counsel for the Appellant submitted that the land was not properly described in the F.I.R. In fact, the land is in Survey No.455/2A/1 at Vita. It was in possession of Bhimrao Kashid who was Amit's father. Bhimrao had preferred a Regular Civil Suit No.273 of 1995 for specific performance and for perpetual injunction from disturbance in his possession. That suit was decreed by Civil Judge, J. D., Vita on 14/09/2007. The execution proceedings are still pending. He submitted that, it shows that the land was in possession of co-accused's father. Therefore, basically, the allegations in the F.I.R. are false. He further submitted that, on 11/10/2021 itself, Amit had lodged an N.C. complaint vide N.C.R.No.1262 of 2021 at Vita police station against Rahul about the same incident. Rahul was related to the Respondent No.2 and was from his group. As a counter blast to this background, a false F.I.R. is lodged against the appellant.

6. Learned counsel for the Respondent No.2 opposed these submissions. According to him, the offence is clearly made out. He also relied on the video recording of the incidents. Learned APP produced the investigation papers before me to oppose this

application.

7. I have perused the investigation papers. The respondent No.2's case is supported by his relatives i.e. his mother Kalabai, Rahul, Rahul's wife Nilima, Kiran etc. All of them are his relatives. As far as first part of the incident, which had taken place in the afternoon is concerned, the Respondent was accompanied by his mother alone. The charge-sheet shows that, even Rahul and Nilima had witnessed the incident. In any case, they are the relatives of the Respondent No.2. Therefore, at this stage, there is substance in the argument of learned counsel for the appellant that the incident in the afternoon had not taken place in public view. As far as allegation of assault on the respondent No.2 is concerned, there is no medical certificate and it is not supported by any other circumstance.

8. In respect of the incident in the night, again there were no independent witnesses to that incident. Therefore, it is doubtful whether the offence U/s.3(1)(r) and 3(1)(s) of the Atrocities Act is made out or not. At this stage, sufficient doubt is created about it.

This is to be seen in the background of an N.C. complaint lodged by Amit and also of the civil litigation between the parties. In addition, there is unexplained delay of about 8 days in lodging the F.I.R. There is nothing to show that the Respondent No.2 had approached anybody else or even any authority putting forth his grievance. Considering all these aspects, the appellant has made out a case for protection of anticipatory bail order. However, looking at the dispute it is necessary to put certain condition on the appellant.

9. Hence, the following order:

O R D E R

- i) In the event of his arrest in connection with C.R.No.468 of 2021 registered at Vita police station, District Sangli, the Appellant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The Appellant shall report to the concerned police

station once in a week for a period of six months from today.

iii) The Appellant shall co-operate with the investigation.

iv) The Appeal is disposed of.

(SARANG V. KOTWAL, J.)