

URMILA
PRAMOD
INGALE

Digitally signed
by URMILA
PRAMOD
INGALE
Date: 2023.08.10
17:41:30 +0530

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

APPEAL NO. 950 OF 2021

Mr. Ananda Ravji Choughule and anr. ..Appellants
VS.
The State of Maharashtra and anr. ..Respondents

Mr. Shreyas P. Barsawade, for the Appellant.
Ms. Anamika Malhotra, APP for the State.
Mr. Mainak Adhikari, for Respondent No.2.
Mr. S.P. Yadav, API, Shirur Police Station present.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 10, 2023

P.C. :

1. Heard learned counsel for the appellants, learned APP and learned counsel for respondent no. 2 – complainant.

2. This is an appeal challenging the order passed by Sessions Court rejecting the application made by the appellants for pre-arrest bail for the offence punishable under sections 323, 34, 341, 504, 506 of the Indian Penal Code, 1860 (“IPC”, for short) and sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Respondent no. 2 has lodged the FIR bearing no. 676 of 2021 with Shirur Police Station in respect of an incident that occurred on 11/08/2021. It is alleged that the

appellants abused the respondent no. 2 on caste. FIR is lodged on 04/09/2021.

3. On the very same day of the incident i.e. on 11/08/2021 even the appellants have lodged FIR against the respondent no.2 for offence punishable under sections 143, 147, 149, 323, 324, 504, 506 of IPC. It is the case of the appellant no.1 in the said FIR lodged by him that the appellants were assaulted by the group of respondent no. 2 with a stone. The appellant no.1 suffered injuries.

4. There is delay in lodging the FIR on 04/09/2021 by the respondent no. 2, though incident allegedly happened on 11/08/2021. Learned APP as well as learned counsel for respondent no. 2 invited my attention to the observations of the learned Sessions Judge to submit that delay has been explained. However, the fact remains that the appellants lodged FIR on the very same day of the incident and as a matter of fact, appellant no. 1 is an injured witness. There is nothing on record to indicate that any attempt was made by the respondent no.2 to lodge FIR prior to 04/09/2021. It further needs to be noted that appellant no. 1 is 65 years of age. The appellant no.2 is his wife aged 60 years.

5. There are two antecedents reported against the appellant no.1,

one is in connection with offence punishable under sections 326, 323, 504, 506 of IPC and the other is in connection with the offence punishable under section 65E of the Bombay Prohibition Act. The antecedent against the appellant no. 2 is of the year 2011 under section 65E of the Bombay Prohibition Act. In my opinion, the antecedents are not such that the same are by itself sufficient to deprive the appellants the facility of pre-arrest bail. In any case, I propose to impose conditions while allowing the appeal. I am satisfied that the bar under section 18 of the Atrocities Act will not apply in the present facts. Hence, the following order.

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order is set aside.
- (iii) The interim order of this Court dated 14/12/2021 is confirmed.
- (iv) The appellants to co-operate with the investigation.
- (v) So far as the appellant no. 1 is concerned, he shall stay out of the jurisdiction of Shirur Police Station for a period of 3 months from today.

6. The appeal is disposed of.

(M. S. KARNIK, J.)