

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 953 OF 2021

Uttam Eknath Shinde And Anr. ...Appellants
Versus
The State Of Maharashtra And Anr. ...Respondents
WITH
CRIMINAL APPEAL NO. 971 OF 2021

Shantaram Eknath Shinde ...Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

....

Mr.Rameshwar Gite a/w Mr.Rohit Gorade Advocate for Appellants in Appeal No.953/2021.

Mr.Nihar Suhas Ghag Advocate for Appellant in Appeal No.971/2021.

Mr. Subir Sarkar Advocate for Respondent No.2 in both Appeals.

Mr. Y. Y. Dabake, APP for the Respondent-State.

PSI Mr. Anand Patore, Niphad Police Station is present.

....

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd JULY, 2023.

P.C.:-

1. Both these Appeals are preferred under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (for short “SC and ST (Prevention of Atrocities) Act” challenging the order dated 11th November 2021 passed by learned Special Judge and Additional Sessions Judge, Niphad Dist. Nashik rejecting the application for

anticipatory bail preferred by the appellants in connection with C.R. No. 997 of 2021 registered with Niphad Police Station for offences punishable under Sections 354-A, 324, 323, 504, 506 read with 34 of the Indian Penal Code and Sections 3(1)(w)(iii), 3(1)(r)(s), 3(2)(va) of the SC and ST (Prevention of Atrocities) Act.

2. The First Information Report (for short “FIR”) was registered at the instance of Respondent No.2 on 28th October 2021 alleging that, she belongs to Hindu Mahadev Koli. On 27th October 2020, the respondent No.2 and her family member had visited their agricultural land situated at gut No.131. At that time, the accused came to the spot and obstructed them. The accused then abused the complainant and others on the basis of their caste and also outraged her modesty. One of them assaulted the complainant by agricultural equipment of her leg.

3. The appellants had preferred an application for anticipatory bail before the Court of Sessions at Niphad, which has been rejected vide order dated 11th November 2021.

4. Learned Advocate for the appellants submitted that, the FIR has been registered with malafide intention and appellants have been falsely implicated in the crime. There is serious dispute about the caste claim of the complainant. In the FIR she has claimed that, she belongs to Hindu Mahadeo Koli Caste which is a Scheduled Tribe. However, in earlier all proceedings, the father of the complainant had claimed that, he belongs to

Hindu Koli Caste. The subject property was purchased by the appellants from the father of complainant and sale deed was executed in that regard in the year 1999. In the sale deed father of the complainant had claimed himself to be Hindu Koli. For the first time, after the period of more than 20 years, the complainant and her family members are disputing the fact that the property was sold to the appellants. There are various other proceedings in relation to the sale of the property which indicate that, the complainant belongs to Hindu Koli Caste. The suit filed by complainant's father has been dismissed. Much prior to registration of the FIR, complaint was filed at the instance of the appellants that, the opponents would implicate the appellants in false case. The said complaint was forwarded on 30th June 2021 and NC complaint was registered on the same day. Another complaint was forwarded to Niphad Police Station at the instance of the appellants on 22nd October 2021. Offence under the Atrocities Act are not made out since the version of the complainant is not corroborated by any independent person.

5. Learned APP and learned Advocate for Respondent No.2 submitted that, specific allegations are made in the FIR with regard to the abuses on the caste and incident of outraging modesty. Prima facie offence is made out and in view of bar under Section 18 of the atrocities Act, the appellants are not entitled for anticipatory bail. It is submitted that, during the course of investigation, caste certificate has been produced by the complainant

which indicate that, she belongs to Hindu Mahadev Koli Caste. The said certificate was issued on 25th November 2021. The FIR referred to the presence of all the independent persons, who came to the spot at the time of incident. The dispute about the caste certificate will have to be agitated during the trial.

6. From the documents it is apparent that, the dispute relates to the right relating to the property. There are documents on record which indicate that, when the appellants had purchased the property from the father of the complainant in the year 1999, several other proceedings were initiated. In the sale deed as well as in other proceedings the complainant's father had claimed himself to be belonging to Hindu Koli Caste. Complainant has produced certificate is showing that she belongs to Hindu Mahadeo Koli Caste which has been issued by Sub-Divisional Officer on the date mention herein above. Perused investigation papers. Two persons referred to in the FIR, who came to the spot namely Sahebrao Chhabu Gaikwad and Meena Sahebrao Gaikwad had given their statements during investigation, who referred to the quarrel between parties but there is no reference of abuses on caste by accused in their statement. They are not eye witness to the alleged incident of outraging modesty and caste abuses. There are no independent witness to corroborate the version of the complainant with regard to the caste abuses by accused. The FIR suffers from malafide. In view of all the aforesaid circumstances, bar under Section

18 of the ST and ST Act would not be an impediment to grant relief in the nature of anticipatory bail to the appellants.

ORDER

- (i) Criminal Appeal Nos. 953 of 2021 and 971 of 2021 are allowed.
- (ii) Interim orders dated 29th November 2021 and 6th December 2021 are confirmed.
- (iii) In the event of arrest of the appellants in connection with C.R. No. 997 of 2021 registered with Niphad Police Station, Nashik, the appellants are directed to be released on bail on furnishing PR bond in the sum of Rs. 10,000/- each with one or more sureties in the like amount.
- (iv) The appellants shall appear before the Investigating Office as and when called for.
- (v) The appellants shall not tamper with the evidence in any manner.
- (vi) Both Appeals stand disposed off.

(PRAKASH D. NAIK, J.)