

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1119 OF 2023

Gopal Popat Gaikar and ors .. Appellants
Versus
The State of Maharashtra and anr .. Respondents

WITH
CRIMINAL APPEAL NO.1190 OF 2023

Sandip @ Gharyabhai Bhaskar Gaikar .. Appellants
Versus
The State of Maharashtra and anr .. Respondents

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Mr.Santosh G. Shirsat for the appellant in both the Appeals.
Mr.Y.M. Nakhwa, APP for the State.
Mr. APP for the State.
Mr.Dhiraj Bansode with Sachin Hande for respondent no.2.
IO Dy.S.P Sunil Bhamre from Nashik Rural present.

CORAM: BHARATI DANGRE, J.
DATED : 10th NOVEMBER, 2023

P.C:-

1 The appellants are apprehending their arrest in connection with C.R.No. 276/2023 registered with Wadiverhe police station, Nashik at the instance of the complainant Laxman Ramdas Pawar, who belong to bhil community, which is recognized as a Scheduled Tribe.

He has narrated an incident dated 12/9/2023 to the concerned police station in his complaint dated 16/9/2023 i.e. after lapse of four days, alleging that all was not well between people belonging to his community and one Pandit Gaikar, accused no.1. He has referred to an incident dated February 2023, when according to him, a brawl had occurred between his cousin Ankush Godhade and the son of Pandit Gaikar and this had resulted in registration of an offence u/s.307 IPC with the very same police station at the instance of Shivaji Pandit Gaikar, against one Chetan Pawar, Omkar Gondhale, one Ankush Godhade. From that time, the relationship between the two communities were strained.

2 While narrating the incident dated 12/9/2023, it is alleged that when the complainant reached a particular spot, opposite the hotel of Gopal Gaikar, the accused no.1 Pandit was present there and he restrained him from proceeding ahead.

Pandit Gaikar is then accused of hurling casteist abuses and he summoned the persons present sitting in the hotel, whereupon Sanjit Gaikar, Krishna Gaikar, Bhausahab Gaikar, Gopal Gaikar, Vaibhav Gaikar, Shubham and Sandeep, the accused accused came out, and it is the version of the complainant that they were armed with weapons like iron rod, iron pipe, wooden stick and they assaulted him in a brutal manner, which resulted in injuries on his hand, legs, back, as the assault was mounted on these parts of the body.

Vaibhav and Shubham are alleged to have assaulted with great force upon his hands, leg and back, as a result he fell down and thereafter also, he was assaulted by kicks and blows.

Then, he was taken at a spot where he was tied to a pole and the accused Sunita, Ratna, are alleged to have spitted on his face by insulting him.

A knife was also pulled by one Krishna, but he was stopped in time by the wife of the complainant. Narration of the aforesaid incidents resulted in invocation of Section 323, 324, 504, 506, 143, 147, 149, 109, 509 of the IPC and Sections 3(1) (r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 The respondent is served with a notice and he is represented through the learned counsel who has filed an affidavit, opposing the relief as prayed for in the Appeal by submitting that the accused persons have committed serious offence and they are capable of causing harm to them in future and a possibility is also expressed that they may flee from the course of justice.

Apart form this, it is also projected that the accused are from tribal community and the accused carry influence in the village and therefore, there is every possibility that they tamper with the evidence.

The affidavit filed by the respondent is taken on record.

4 The injury certificate of Laxman Pawar is placed before me by the learned APP which refer to Simple Injuries in form of contusion on back (lumber region), contusion on right arm above elbow on the outer sphere and contusion below right eye, all the injuries are described to be Simple Injuries. The C.T. scan and X-ray did not reflect any injury caused.

It is evident that the incident is possibly an outcome of the earlier C.R. which is registered by the son of accused no.1 invoking Section 307 and the narration of complainant to be an exaggeration, as the injury certificate reflect that the injuries sustained are Simple Injuries and if the narration in the complaint is to be believed, of brutally assaulting him, he definitely ought to have sustained injuries of serious nature than the one which are reflected in the medico legal certificate.

5 As far as the abuses in the name of caste are concerned, they are attributed to the accused no.1 Pandit. The three ladies; the wife of Pandit Gaikar, Sunita wife of Bhausaheb Gaikar, and Ratna, wife of Gopal Gaikar, whose name is not mentioned, are alleged to have spitted on the face of the complainant which obviously is an insulting act, and must be dealt with sternly.

The question that arises before me, at this stage, is whether the custodial interrogation of the accused persons is necessary for the purpose of completion of investigation.

The learned APP on instruction of Mr. Sunil Bhamre, the Investigating Officer, submit that the investigation in the subject C.R. is complete and the charge-sheet is likely to be filed within two weeks from today.

6 In the wake of the above statement which is clearly indicative that the custodial interrogation of the accused persons is not warranted for completion of the investigation, and since the purpose of arrest is for completion of investigation, I do not think that there is no reason to refuse the relief to the appellants.

No doubt considering the seriousness of the accusations and if it is proved that the act had taken place only in order to humiliate and cause insult to the complainant, who belong to Scheduled Tribe, they shall be adequately punished at the culmination of the trial. Apart from this, the mere factor that they belong to influential community do not deserve them to be incarcerated.

Since the two communities are residing in the village since time immemorial, and even the apprehension that they may flee the course of justice, is also not a ground to deny them their liberty.

Recording that no offence has been made, prima facie against the accused persons under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and since the abuses are attributed to the accused no.1, who is informed to be already released on bail, on being arrested, the following order is passed :-

ORDER

- (a) Appeals are allowed. Order dated 3/10/2023 passed by the Additional Sessions Judge-2, Nashik, is quashed and set aside.
- (b) The appellant no.1 Gopal Popat Gaikar, appellant no.2 Bhausahab Gaikar, appellant no.3 Vaibhav Pandit Gaikar, appellant no.4 Krishna Gopal Gaikar, appellant no.5 Shubham Bhausahab Gaikar, appellant no.6 Sunita Pandit Gaikar, appellant no.7 Ratna Bhausahab Gaikar, appellant no.8 Yashodabai Gopal Gaikar in Appeal No.1119 of 2023, in connection with FIR No.0276/2023 registered with Wadivarhe police station, and Appellant Sandip @ Gharyabhai Bhaskar Gaikar in Appeal No. 1190/2023, shall be released on bail in FIR No. 0276/2023 registered with Wadivarhe police station, on furnishing P.R. Bond to the extent of Rs.25,000/- each with one or two sureties in the like amount.
- (c) The appellants shall mark their attendance with the concerned police station on first Monday of every month between 5.00 p.m. to 6.00 p.m, and thereafter as and required by the Investigating Officer, till framing of charge.
- (d) On being released on bail, the appellants shall furnish their contact number and residential address to the

Investigating Officer and shall keep him updated, if there is any change.

(e) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer.

(SMT. BHARATI DANGRE, J.)