

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

CRIMINAL APPEAL NO.1170 OF 2023

1. Shri Rajan @ Hemant Yashwant Bhagat
 2. Shri Shreyas Gurunath Walawalkar ...Appellants
- vs.
1. State of Maharashtra
 2. Shri. Kalyan Sakharam Kadam ...Respondents

Mr. A.S. Khandeparkar, Senior Advocate a/w Sangram Desai, Rushikesh G. Bhagat, Prerak A. Sharma, Rohit P. Mahadik, Vaibhav Kulkarni, Apoorva Khandeparkar, Farhan Shaikh, i/b. Khandeparkar & Associates, Advocate for the Appellants.

Mr. Shantanu Phanse, Appointed Advocate for the Respondent No.2 through VC a/w Ms. Ilsa Shaikh.

Mr. S.R. Agarkar, APP for Respondent - State.

CORAM : S. M. MODAK, J.
DATE : 20th DECEMBER 2023

P. C. :-

1. Heard learned Senior Counsel Mr. Khandeparkar for the Appellants, learned APP and learned Advocate Mr. Phanse assisted by Ms. Ilsa Shaikh for the Respondent No.2 – first informant.
2. It is true that this Court has granted protection to the Appellants from arrest as per order dated 30th October 2023. The FIR is lodged by the Respondent No.2 and the incident took place on 23rd January 2023 at 4.30 pm. Neither first informant was knowing the Appellants nor he says that the Appellants know him. The Appellants were travelling in a Innova Car. The car was going from Sawantwadi to the direction of Kudal

whereas one motor cycle was standing on the road near the shop belonging to Akeri Police Patil. This motorcycle caused obstruction to Innova driver and that is why there were heated exchange of words in between motorcycle driver and occupants of the Innova car. During that incident, the first informant alleges that he tried to pacify both the parties.

3. Being annoyed the occupant of Innova car gave abuses under the pretext that the said person knows that the Police Patil from village Akeri is a member of Scheduled Caste. Further, he alleges that his golden chain was robbed. It is true that the FIR was lodged on 27th January 2023 after gap of 4 days. FIR further mentions that it is after consulting with his colleagues and the Advocate.

4. Learned Advocate Shri Phanse appearing through VC opposed the bail for the reason that castes abuses are mentioned in the FIR and it is in public view. Whereas, learned APP admittedly submitted that two of the witnesses Suresh Chavan and Ram Kanse have not supported allegations of caste abuses.

5. Learned Additional Sessions Judge vide order dated 11th September 2023 has refused to grant anticipatory bail for the reason that offence under section 327 of the Indian Penal Code is non-bailable offence and custodial interrogation is required. Whereas, the FIR mentions that the golden chain was found by the first informant though not in the same

form. I do not think custodial interrogation is required.

6. There is delay in lodging FIR and prior to lodging complaint at Kudal Police Station, his statement was recorded in Sawantwadi Police Station and he has stated about vehicular accident. These materials are sufficient to lift bar under section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. So the case for bail is made out. Hence, the following order :-

ORDER

- (i) Appeal is allowed;
- (ii) Order dated 11th September 2023 passed by the Special Court, Sindhudurg – Oros in Criminal Bail Application No.144 of 2023 is set aside;
- (iii) In case of arrest in Crime No.24 of 2023 registered with Kudal Police Station for the offences punishable under Sections 323, 327 r/w 34, 352, 504 and 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), 1989, the Appellants - Shri Rajan @ Hemant Yashwant Bhagat and Shri Shreyas Gurunath Walawalkar be released on furnishing P.B. and S.B. for Rs.15,000/- each;

7. These are my *prima facie* observations. Let the learned trial Court need not be influenced by them.
8. Learned Advocate Mr. Phanse be paid fees as per Rules.
9. Appeal is disposed of in the aforesaid terms.

[S. M. MODAK, J.]