

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

CRIMINAL APPEAL NO. 1265 OF 2023

1. Ashok Kundlik Mhatre
2. Sharad Dattu Mhatre
3. Manoj Ganpat Mhatre
4. Sachin @ Pintu Ganpat Mhatre
5. Mukesh Shankar Mhatre
6. Ashwin @ Asha Chandu Mhatre ...Appellants

vs.

1. State of Maharashtra
2. Mrs.Priya Pankaj Panda ...Respondents

Mr.Charan Penthalia a/w Mr.Amandeep Singh Boles - Advocate for Appellants.

Mr.S.R.Agarkar - APP for Respondent No.1 - State.

Mr.Kumar Ghinde a/w Mr.Amol Lokhande - Advocate for Respondent No.2.

Mr.S.H.Varade - ACP - Ambarnath.

Mrs.Priya Panda - Complainant - present.

CORAM : S. M. MODAK, J.

DATE : 19th DECEMBER 2023

P. C. :-

1. Heard learned Advocate for the Appellants - Accused, learned APP and learned Advocate for the First-Informant.
2. There are two versions to the dispute. One is about an unauthorized construction done by the First-Informant on the

gavthan land in front of Saint Joseph Convent School. She runs a stall under the title Jai Bhim Mahila Bachat Gat. There are complaints made by the residents of the locality including these Appellants to the Ulhasnagar Municipal Corporation and even the Corporation has planned to demolish that unauthorized structure made up of huts in the area of Vadolgaon village. Whereas, the version of the First-Informant is she runs a stall in front of Saint Joseph School for the last 10 to 12 years and she is paying tax to Ulhasnagar Municipal Corporation. Whereas, these Appellants are harassing her and even they have threatened her generally and on account of caste.

3. Both the sides invited my attention to the various documents filed along with the memo of Appeal and documents filed by the First-Informant. Apart from the various complaints made by the local residents against the unauthorized construction of the First-Informant, my attention is also invited to certain non cognizable complaints. The plea is also taken that even though the FIR is filed in respect of the incident dated 20th March, 2023, the FIR is filed belatedly on 21st May, 2023 and in fact, there are no abuses on account of caste and it is not mentioned in the N.C., complaint filed by the First-Informant against the Appellants - Ashok Mhatre, Vishnu Mhatre, Sachin Mhatre and Sharad Mhatre. (Page No.57).

There is also N.C., complaint filed on the same date by the Appellant - Sharad Mhatre against the present First-Informant. It is on Page No.55. Whereas, the First-Informant through her Counsel gave an explanation that in fact, Police have not registered her complaint and she was required to protest with the Police by way of a written complaint. It is dated 10th April, 2023. (Page No.65).

4. Ultimately, the Police have registered the offence under Sections 143, 294, 323, 506 of Indian Penal Code, 1860 ["IPC"] and under Sections 3(1)(r), 3(1)(s), 3(1)(w)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC & ST Act"). According to the First-Informant, all the Appellants are very influential persons and it is difficult for her to even approach the Police considering their clout. Certain photographs from C.C.T.V., cameras installed at the Police Station showing few of the Appellants present in the Police Station is shown to me (Page No.108 and 109).

5. It is true that the Court of Civil Judge Junior Division - Ulhasnagar on 6th April, 2023 has refused to grant status-quo in a Suit filed by this First-Informant. It is on Page No.60. It is also true that these Appellants are not party Defendants to that Suit.

6. It is true that there is bar under Section 18 for grant of

anticipatory bail in an offence under SC & ST Act. However, this Court and Hon'ble Supreme Court have interpreted that the bar is not absolute where Court finds that there is no material to justify the allegation or if the allegations are not true, bar will be lifted.

7. In this case, I am of this opinion that considering the allegations and counter allegations and considering the fact that no caste abuses are mentioned in the N.C., complaint dated 20th March, 2023 (Page No.57), I think the bar under Section 18 will not be applicable. Because in that N.C., complaint the reason of dispute is mentioned. It is on account of the construction and it does not mention that caste abuses were given. It is true that the First-Informant has protested by writing to the Assistant Commissioner of Police on 10th April, 2023. (Page No.65). However, in that complaint, she has not stated that on 20th March, 2023, she was abused on account of caste. There is general allegation that as she is member of scheduled caste, she is being harassed. But, nowhere there is reference of the incident on 20th March, 2023 by referring her caste. In view of that, bar is lifted.

8. Learned Additional Sessions Judge in the order dated 16th October, 2023 was pleased to refuse an anticipatory bail for the reason that "the Appellants cannot take the law in their own

hands just because they have complained to the Corporation for removal of an encroachment. Once the Corporation has taken legal action, the Appellants are not entitled to take law in their own hands". Learned Judge has also referred about the abuses in Para No.15. However, learned Judge has not considered the fact that these abuses are not there in N.C., complaint on 20th March, 2023.

9. Learned APP submitted that there are statements of eye witnesses who have said about the caste abuses and the ingredient of '*public view*' is satisfied. According to him, the Appellants have not cooperated by attending the Police Station as the Police wants to file charge-sheet.

10. Even though there may be statements, the N.C., complaint is first in time and Court has to give weightage to that N.C., and its contents. Hence, I am inclined to allow the Appeal.

Hence, order :-

ORDER

- (i) Appeal is allowed.
- (ii) The order dated 16th October, 2023 passed by the learned Additional Sessions Judge-Kalyan rejecting the Application of the Appellants for grant of anticipatory bail is set aside.
- (iii) In case of an arrest in connection with C.R. No. 296 of 2023 registered with Ambernath Police Station - Thane District, the Appellants viz., (i) Ashok Kundlik Mhatre (ii) Sharad Dattu Mhatre (iii) Manoj Ganpat Mhatre (iv) Sachin @ Pintu Ganpat Mhatre

- (v) Mukesh Shankar Mhatre and (vi) Ashwin @ Asha Chandu Mhatre be released on furnishing personal bond and surety bond of Rs.20,000/- each.
- (iv) They are directed to give attendance to Ambernath Police Station - Thane District on 25th December, 2023, 1st January, 2024 and 8th January, 2024 from 10.00 to 12.00 and to cooperate the Police.
- (v) Appellants not to threaten the Prosecution witnesses or to allure them in any manner.

11. In view of the above, Appeal is disposed of.

12. These are my prima facie observations. Learned trial Court need not be influenced by them.

[S. M. MODAK, J.]