

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

CRIMINAL APPEAL NO. 1274 OF 2023

1. Smita Baburao Koli
2. Baburao Hambirrao Koli
3. Dilip Kumar Koli
4. Radhika Dilip Koli ...Appellants

vs.

1. The State of Maharashtra
2. Priti Gautam Jadhav ...Respondents

Mr.Amin Solkar a/w Mr.Gaurav Shenoy and Ms.Lavanya Salve -
Advocates for Appellants.

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

Mr.Vaibhav V. Ugle - Appointed Advocate for Respondent No.2.

Mr.Udaysing Kale - PSI - Ashta Police Station - Sangli.

CORAM : S. M. MODAK, J.

DATE : 18th DECEMBER 2023

P. C. :-

1. Heard learned Advocate Shri.Solkar for the Appellants,
learned APP and learned Appointed Advocate for Respondent
No.2 - First Informant.
2. Their Anticipatory Bail Application was rejected by the
Court of Additional Sessions Judge - Islampur on 9th November,
2023. That is why, present Appeal.
3. Learned Advocate Shri.Solkar raised following

contentions :-

- (a) The Appellants belong to Mahadev-Koli community and they fall within the ambit of special backward classes.
- (b) Without admitting the allegations in the FIR, even if we presume those allegations as correct, the ingredient of '*public view*' which is required for clause (r) and (s) of Section 3 is absent.
- (c) Even the allegations in the FIR do not satisfy the requirement of abetment as laid down in Section 107 of Indian Penal Code, 1860 ["IPC"].
- (d) The incident took place on 30th September, 2023, whereas, FIR is lodged after a gap of 5 days on 5th October, 2023.

4. To buttress his submission, he relied upon the observations in case of ***Amalendu Pal Alias Jhantu v/s. State of West Bengal***¹.

5. Learned APP and learned Advocate for Respondent No.2 invited my attention to the various allegations in the FIR. I have read them and also various investigation papers. It is true that earlier to 5th October, 2023, the Police of Ashta Police Station conducted an enquiry under Section 174 of the Code of Criminal Procedure, 1973 ["Cr.P.C."]. Whereas, the FIR is registered when Priti Gautam Jadhav - sister of the deceased Ganesh lodged the complaint on 5th October, 2023. The offences are under Section 306 read with 34 of IPC and Section 3(1)(r) and Section 3(1)(s) of the Scheduled Castes and the Scheduled

1 (2010) 1 Supreme Court Cases 707

Tribes (Prevention of Atrocities) Act, 1989 [“SC & ST Act”]. There are in all 5 Accused persons. Out of them, Vaishnavi – wife of the deceased was granted an anticipatory bail as she is pregnant. Whereas, the Appellant No.1 – Smita and Appellant No.2 – Baburao are the in-laws of the deceased Ganesh. Whereas, Appellant No.3 – Dilip and Appellant No.4 – Radhika are the maternal uncle and aunt of Accused – Vaishnavi.

6. The marriage of Ganesh with Vaishnavi took place on 24th June, 2023 at Hatkanangle, District : Kolhapur. The deceased Ganesh was a member of scheduled caste community and it was known to the family of Vaishnavi. After the marriage, they used to reside together along with the First-Informant Priti. However, due to quarrel and shortage of accommodation, the deceased Ganesh and Vaishnavi have taken room on hire. Vaishnavi was also pregnant.

7. There are two specific instances quoted in the FIR. It is of 30th August, 2023 and 30th September, 2023. The parents of Vaishnavi used to tell that they do not want the child begotten from Vaishnavi because it will be the children from scheduled caste community. Even they have threatened to take divorce. The Appellant Nos.3 and 4 also used to abuse the deceased on telephone on account of his caste. They have also advised that abortion will be performed and Vaishnavi will remarry again.

8. On account of this, the deceased Ganesh was under constant pressure. The Accused-Vaishnavi left the matrimonial house on 30th August, 2023 and went to the house of Appellant Nos.3 and 4 at Kolhapur. She has not returned home immediately. She returned two days earlier to Ganpati festival. However, again she went to the house of Appellant Nos.3 and 4. On this background, the deceased Ganesh committed suicide by hanging.

9. It is true that the abuses and insult or intimidation has to be within the '*public view*'. It cannot be correlated to public place but it has to be within a '*public view*'. When the allegations in the FIR are perused, it seems that it is the threatening in the form of communication amongst the family members only. So, prima facie, I find that it is not within a '*public view*'. No doubt, Learned Additional Sessions Judge has referred judgments in Para Nos.10 and 11. However, the trial Court has refused to give a benefit of those observations to these appellants for the reason that investigation is going on.

10. It is true that the liberty of individual is involved. So, after going through the averments and the papers, Court can form a prima facie opinion. I am of the view that prima facie the ingredients of '*public views*' are missing. The Police can certainly investigate further and place necessary materials

before the trial Court. These are my prima facie observations.

11. At the same time, when the trial will be conducted, the trial Court is at liberty to form its own decision on the basis of evidence.

12. At the same time, it is true that the present Appellants are not staying with the deceased Ganesh and Vaishnavi. In fact, this is the case wherein husband has committed suicide. The Appellants are residing separately. I do not think that considering the allegations, their custodial interrogation is required. Hence, order :-

ORDER

- (i) Appeal is allowed.
- (ii) The order dated 9th November, 2023 passed by the learned Additional Sessions Judge - Islampur in Criminal Bail Application No.269 of 2023 is set aside.
- (iii) In case of an arrest, the Appellants viz., (i) Smita Baburao Koli (ii) Baburao Hambirrao Koli (iii) Dilip Kumar Koli and (iv) Radhika Dilip Koli be released in connection with C.R. No. 231 of 2023 registered with Ashta Police Station - District : Sangli on furnishing personal bond and surety bond of Rs.20,000/- each.
- (iv) The Appellant Nos.2 and 3 are directed to give attendance to Ashta Police Station - District : Sangli on 22nd and 23rd December, 2023 from 10.00 to 12.00 noon.
- (v) Appellants not to threaten the Prosecution witnesses or to allure them in any manner.

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

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

15. Learned Advocate for Respondent No.2 be paid the fees as per the Rules.

[S. M. MODAK, J.]