

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

CRIMINAL APPEAL NO. 1321 OF 2023

1. Rahul Ashok Kathole
2. Pradip Narayan Shirke ...Appellants

vs.

1. The State of Maharashtra
2. Bhagyashree Mauji Thorat ...Respondents

Mr.Narayan G. Rokade a/w Mr.Ajinkya V. Taskar – Advocate for Appellants.

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

Mr.Rohan Surve – Appointed Advocate for Respondent No.2.

Mr.Milind Devram Shinde – SDPO – Shahapur – District : Thane (Rural).

CORAM : S. M. MODAK, J.

DATE : 13th DECEMBER 2023

P. C. :-

1. Heard learned Advocate for the Appellants, learned APP and learned Advocate Shri.Surve – appointed to represent the Respondent No.2 – First Informant who is working in the Office of Sub-Divisional Police Officer – Shahapur. Their regular bail application was rejected by the Court of Additional Sessions Judge – Kalyan.

2. There are two crimes registered against both these Appellants. They are as follows :-

(a) C.R. No. 316 of 2023 registered at Shahapur Police

Station under Sections 323, 341, 353, 506 read with 34 of Indian Penal Code, 1860 [“IPC”]. One Vasudev is third accused. This FIR is registered on account of the conduct of the accused in obstructing the First-Informant Komal Thakur – Tahsildar in discharging her duty. Whereas, the Appellants contend that they have lodged complaint against the said Tahsildar for abusing them and falsely implicate them in an offence under Section 353 of IPC. Copy of complaint lodged with Shahapur Police Station on 8th September, 2023 is on Page No.13.

- (b) C.R. No. 356 of 2023 registered on 11th October, 2023 under Section 353 read with 34 of IPC as well as Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [“SC & ST Act”]. It is on the complaint of the present Respondent No.2. When these Appellants have visited the Sub-divisional Office on 11th October, 2023 at about 6.30 p.m., these Appellants went to the Office and inquired about the application filed by them against the Tahsildar and when they did not get positive response, they have abused her and threatened her on account of caste by referring her as a member of adivasi community. In the second FIR, there is prayer for regular bail.

3. Learned APP and learned Advocate Shri.Surve emphasized on the conduct of these Appellants in not behaving in sober manner but every time challenging the public servant

when they have not succumbed to their prayers. In addition to that, learned APP filed a report of Sub-divisional Police Officer thereby opposing the regular bail. In Para No.6, there is also a reference of five more offences registered at Kinhavali Police Station against Appellant Pradip Shirke. They are as follows :-

(i) C.R. No. 4 of 2015 :-

Under Sections 325, 323, 504 read with 34 of IPC.

(ii) C.R. No. 5 of 2016 :-

Under Section 65 (f) (e) of Maharashtra Prohibition Act, 1949.

(iii) C.R. No. 137 of 2019 :-

Under Sections 324, 504, 506 of IPC.

(iv) C.R. No. 229 of 2021 :-

Under Section 65(e) of Maharashtra Prohibition Act, 1949.

(v) C.R. No. 4 of 2022 :-

Under Section 65(e) of Maharashtra Prohibition Act, 1949.

5. If we consider the chronology of events, it reveals that firstly, both these Appellants visited the Office of Tahsildar and there are counter versions, one filed by the Tahsildar by way of FIR bearing No. 316 of 2023 dated 8th September, 2023. The Appellants are having counter version by way of their written complaint. Whereas, the second FIR is arising out of follow-up taken by these Appellants in the Office of Sub-divisional Officer.

6. Charge-sheet is already filed. Just because there are previous offences, the accused cannot be denied bail, if they are otherwise entitled. There are remedies available in law if a person is indulging into the activities against the provisions of law. In view of that, subject to strict conditions, bail can be granted.

7. The trial Court has refused the bail for the reason that the investigation is yet not complete. Hence, order :-

O R D E R

- (i) Appeal is allowed.
- (ii) Order dated 9th November, 2023 passed by the Court of Special Judge - Kalyan is set aside.
- (iii) Appellants viz., (i) Rahul Ashok Kathole and (ii) Pradip Narayan Shirke be released on bail in connection with C.R. No. 356 of 2023 registered with Shahapur Police Station - Thane Rural on furnishing personal bond and surety bond of Rs.25,000/- each.
- (iv) Appellants are directed not to enter the Shahapur Revenue District for one (1) year.
- (v) Appellants to furnish their alternate place of residence to the Investigating Officer and to the trial Court prior to furnishing bail and to inform the change, if any.
- (vi) Appellants not to threaten the Prosecution witnesses or to allure them in any manner.

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

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

[S. M. MODAK, J.]