

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

CRIMINAL APPEAL NO. 1270 OF 2022

1. Ishwar Chandrakant Darekar
Age : 32 Years, Occ : Business,
2. Jayashree Chandrakant Darekar ...Appellants
Age : 50 Years, Occ : Household,
Both
R/at, Jejuri, Tal Purandar, Dist. Pune.

Versus

The State of Maharashtra And Anr. ...Respondents

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Mr. Kuldeep S. Patil a/w Mr. Nikhil Hire i/by Mr. Aadesh Kondedeshmukh, Advocate for the Appellants.

Mr. Rahulkumar L. Tiwari a/w Ms. Sandhya Balaso Rasal/Jadhav, Advocate for Respondent No.2.

Mr. Y. Y. Dabake, APP for the Respondent No.1– State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 6th JULY, 2023.

PER COURT:

1. The appellants have challenged the order dated 30.11.2022 passed by the learned Additional Sessions Judge, Vadgaon, Dist. Pune, rejecting the application for anticipatory bail.

2. The appellants are apprehending arrest in connection with Crime No.603 of 2022 registered with Dehu Road Police Station, Pimpari Chinchwad, Dist. Pune, on 26.09.2022 by respondent No.2 for offences under Sections 354-A(1)(iv), 504, 506, 3(1)(r),

3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as “SC/ST (Prevention of Atrocities) Act”].

3. The case of the prosecution is that the complainant is acquainted with Ms. Abhilasha Darekar. Ms. Abhilasha got married to Ishwar Darekar (Appellant No.1). Being close friend of Abhilasha, the complainant was given all information by Abhilasha about her husband. The appellant No.1 was knowing the complainant. He did not like the friendship between Abhilasha and complainant on account of her caste. Complainant's friend Priyanka and complainant were operating library in partnership business. On 06.09.2022, the complainant had visited the parental home of Abhilasha to wish her on her birthday which was due on 07.09.2022. on 07.09.2022, the complainant and family members of Abhilasha were making preparation for celebrating birthday. Abhilasha had informed the complainant about marital dispute with her husband. At about 1.00 p.m. the husband of Abhilasha (appellant No.1), his mother Jaya Darekar (appellant No.2) and other relatives barged into the house of Abhilasha and they started pressurizing Abhilasha to withdraw the complaint lodged by her under Section 498-A of Indian Penal Code. At that time, mother of Abhilasha told the accused not to create ruckus in the house. The

appellant No.2 abused her. The appellant No.1 looked at the complainant and said that, his wife Abhilasha is spoiled because of her friendship with the people like complainant who is belonging to lower caste. The appellant No.2 also abused the complainant. The complainant and family members of Abhilasha left the house. When they were on the road, the accused (appellants) again abused the complainant on her caste. At that time Ashutosh Ghanwat, Sunil Marathe and the neighbours gathered at the said place. The appellant No.1 again abused the complainant and made remarks against her about her character. Both the appellants again abused the complainant on her caste. Thereafter the accused and the relatives left the spot of incident. First Information Report was lodged on 26.09.2022.

4. Learned Advocate for the appellants submitted that the FIR is false. The complainant has falsely implicated the appellants by using her caste. There is delay in lodging FIR. There is matrimonial dispute between appellant No.1 and Abhilasha Darekar, who is wife of appellant No.1. She has lodged the complaint under Section 498-A of IPC and the proceedings are pending before the concerned Court. According to the complainant, the incident had partly occurred in the house of Abhilasha and partly on the road. It was a deliberate attempt to

show that the incident had occurred within public view and public place. The allegations of complainant are not supported by any independent witness. The witnesses other than the complainant, Abhilasha and her relatives are the same persons who are witnesses in the complaint lodged by Abhilasha under Section 498-A of IPC. On the day of incident Abhilasha had lodged the complaint with the police which was recorded as N.C. Complaint registered for the offence punishable under Sections 504 & 506 of IPC. The said complaint does not refer to the allegations as spelt out in the FIR about abuses on caste etc. The said complaint does not even refer to the presence of complainant at the time, when the said incident had occurred. The version of complainant is completely false which is evident from the said N.C. Complaint. The complaint is lodged out of malafides. Bar under Section 18 of the Atrocities Act would not be attracted. Investigation is completed and charge-sheet is filed.

5. Learned Advocate for the Appellants has relied upon the decision of this Court dated 10.03.2023 delivered in Criminal Appeal No.1258 of 2022 and Criminal Appeal No.1259 of 2022.

6. Learned A.P.P. submitted that the complaint refers castiest abuses made by the appellants. The FIR makes out the case for commission of offences under the Atrocities Act as well as under

IPC. During the course of investigation, statement of witnesses were recorded. They have supported the version of complainant.

7. Learned Advocate for Respondent No.2 submitted that the application is not maintainable in view of bar under Section 18 of the Atrocities Act. The N.C. Complaint was lodged by Abhilasha. However, the abuses were hurled against the complainant and hence she has elaborately stated the nature of allegations by lodging the FIR. The appellants have abused the complainant on her caste. The offences under the Atrocities Act are made out. The complainant narrated the true facts in the FIR. Prima facie case is made out against the appellants. They are not entitled for anticipatory bail. He relied upon the following decisions :

- i. ***Vilas Pandurang Pawar & Anr. Vs. State of Maharashtra and Others*** passed by the Hon'ble Supreme Court in Special Leave Petition (CRL.) No.6432/2022 by Judgment dated 10.09.2012.
- ii. The order dated 26.04.2022 passed by this Court in Criminal Appeal No.229 of 2022.

8. There is matrimonial dispute between Appellant No.1 and Ms. Abhilasha Darekar. Complaint under Section 498-A of IPC is filed by her which has resulted in filing charge-sheet. The said proceedings are pending before the competent Court. The complainant in the present case has alleged that, she is a friend of

Abhilasha Darekar and to wish her on her birthday, she had travelled from Mumbai to Pune to the parental home of Abhilasha Darekar. The incident in question had allegedly occurred on 07.09.2022. The FIR was lodged belatedly. The appellant No.2 is the mother of appellant No.1. The appellant No.2 is mother-in-law of Abhilasha Darekar. On 07.09.2022 Abhilasha Darekar had approached to Pimpri Chinchwad Police Station and lodged the complaint against the appellants alleging that the opponents are her husband and mother-in-law. She was celebrating her birthday. Her mother-in-law, father-in-law, uncle and aunt had visited her house. Her husband and mother-in-law had abused her and threatened her and she was pressurized to withdraw her complaint. The Police recorded the said complaint as non-cognizable complaint for offences punishable under Sections 504 and 506 of IPC. From the contents of the said complaint it is apparent that, it refers to incident dated 07.09.2022 and presence of appellants at her parental home, where she was residing with them. The complaint does not refer to the presence of the complainant in the Atrocities case nor refers to the alleged incident narrated in the FIR. There is room for an arguments that the allegations in the FIR are afterthought and concocted. Although the incident had occurred on 07.09.2022, the present FIR was registered on

26.09.2022. There is inordinate delay for which there is no plausible explanation. The complainant had alleged that, she went from Mumbai to Pune at the parental home of Abhilasha Darekar, where the alleged incident had occurred. It appears that the FIR was lodged on account of malafides. Smt. Abhilasha Darekar had lodged the FIR alleging offence under Section 498-A of IPC. During the course of investigation, statements of witnesses were recorded. On completing investigation, charge-sheet is filed and the said case is pending before the concerned Court. It is pertinent to note that the witnesses whose statements were recorded in the case registered for offence under Section 498-A of IPC at the instance of Smt. Abhilasha Darekar are also recorded in the present case during the course of investigation. They are certainly not independent person. The alleged incident of abuses on caste has partly occurred in the house and partly on the road. Thus, the part of the incident has not occurred at public place and part of the incident had occurred on the road but not supported by any independent witness. Thus, it cannot be said that the incident had occurred within public view. Learned Advocate for Respondent No.2 has submitted that the respondent No.2 had forwarded her complaint to Police on 07.09.2022. The said complaint is produced although it bears the date 07.09.2022, the acknowledgment of

receipt of the complaint reflects the date of receipt is 13.09.2022.
Investigation is completed and charge-sheet is filed.

9. In view of the aforesaid circumstances, the bar under Section 18 of the Atrocities Act would not be attracted and there is no impediment in allowing the appeal and granting relief to the applicant in the nature of anticipatory bail.

ORDER

- i. Criminal Appeal No.1270 of 2022 is allowed;
- ii. The order dated 30.11.2022 passed by the learned Additional Sessions Judge, Vadgaon, Dist. Pune, in Criminal Bail Application No.645 of 2022 is set-aside.
- iii. Interim order dated 23.12.2022 passed by this Court is confirmed.
- iv. In the event of arrest of the Appellants in connection with C.R. No. 603 of 2022 registered with Dehu Road Police Station, Dist. Pune, the Appellants be released on bail on their furnishing P. R. Bond in the sum of Rs.30,000/- each with one or more sureties in the like amount;
- v. Appeal stands disposed of accordingly.

(PRAKASH D. NAIK, J.)