



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.515 OF 2023

1. Sau. Rina Shivaji Vairalkar,
Aged about 37 years,
Occupation-Household.

2. Savita Fakira Vairalkar,
Aged about 59 years,
Occupation-Household.

Both R/o. Khandwa, Tah. Motala,
District-Buldhana.

..

Appellants

.. Versus ..

1. State of Maharashtra,
Through Police Station Officer,
Police Station Dhamangaon Badhe,
Taluka-Motala, District-Buldhana.

2. Sau. Ranjana Sahebrao Ingle,
Aged 45 years, Occupation-Household,
R/o. Khandwa, Tah. Motala,
District-Buldhana.

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Respondents

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Shri Ram D. Karode, Advocate for the Appellants,
Shri A.M. Kadukar, APP for Respondent No.1-State,
Shri Shantaram Morey, Advocate for Respondent No.2-Victim.

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CORAM : M.W. CHANDWANI, J.

DATED : 04/10/2023

ORAL JUDGMENT :

1. Heard finally with the consent of the learned counsel
appearing for the parties.

2. **Admit.**

3. The anticipatory bail of the appellants having been rejected by the learned Special Judge, Malkapur, vide its order dated 19.07.2023 in connection with Crime No.179/2023 registered with Dhamangaon Badhe Police Station for offences punishable under Sections 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 and Section 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Act of 1989"). Hence, the present appeal came to be filed.

4. Heard the learned counsel for the appellants, learned Additional Public Prosecutor for respondent no.1-State assisted by the learned counsel for respondent no.2-victim.

5. Perusal of the First Information Report goes to show that informant and co-accused Shivaji Vairalkar, the husband of appellant no.1 and son of appellant no.2 are adjoining field owners. Shivaji had purchased the said land admeasuring 0.60 HR, from brother-in-law of informant. There was dispute over the measurement of the land. As per the First Information Report, on 25.06.2023 at about 11.00 am, when the informant was in her field, Shivaji along with the appellants came there.

Appellant no.1 asked the informant not to put soil on the line of crops. There were exchange of hot talks between the informant and appellant no.1. At that time, accused Shivaji threatened, abused and assaulted the informant by fist blows and appellant no.1 hold the informant by her hair and also slapped her; whereas appellant no.2 abused her. It is the specific allegation in the complaint that co-accused Shivaji also abused the informant in the name of her caste, therefore, on her complaint, aforesaid offence came to be registered against the appellants.

6. Apprehending their arrest, the appellants applied before the learned Special Court for grant of anticipatory bail. Learned Special Judge rejected the application of anticipatory bail by his order dated 19.07.2023 holding that bar under Section 18 of the Act of 1989 would attract.

7. Feeling aggrieved with the order of rejection of anticipatory bail, the present appeal came to be filed.

8. It is the contention of the learned counsel for the appellants that the allegation of abusing in the name of caste is against the co-accused Shivaji, who was arrested and released on bail by the learned Special Judge, Malkapur, vide order dated 06.07.2023. There is no allegation against the present appellants regarding intentional humiliation

and abusing in the name of caste of the informant, therefore, accordingly Sections 3(1)(r) and 3(1)(s) of the Act of 1989 will not be attracted to the case of the appellants before the Court. According to him, since there is no *prima facie* material against the appellants of having committed the offence under the Act of 1989, bar under Section 18 of the Act of 1989 would not be applicable.

9. Per contra, the learned Additional Public Prosecutor for the respondent no.1-State assisted by learned counsel appearing for respondent no.2-victim submit that there is mention in the FIR regarding abuses given by co-accused Shivaji. Even, according to them, there is allegations of beating and abusing to the informant by the appellants, which *prima facie* show that offence under the Act of 1989 have been committed.

10. Bare perusal of FIR goes to show that the acts of abusing in the name of caste and threatening to the complainant are attributed to co-accused Shivaji, the husband and son of appellant nos.1 and 2 respectively. The allegation against the present appellant no.1 is of beating and abusing to the informant, whereas allegation against the appellant no.2 is only abusing. Therefore, there is no material to suggest

that the present appellants have committed the offence punishable under Sections 3(1)(r) and 3(1)(s) of the Act of 1989.

11. The prosecution has also alleged committing of offence under Section 3(2)(va) of the Act of 1989, which is reproduced for ready reference :

Section 3 (2)(va) : commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code for such offences and shall also be liable to fine."

Thus, from perusal of aforesaid section, it shows that if any offence of the Indian Penal Code specified in the Schedule annexed with the Act has been committed by any person, then Section 3(2)(va) of the Act of 1989 would be applicable and he shall be punished with such punishment specified under the Indian Penal Code for such offences.

12. Nowhere in the Act of 1989, it is provided whether the offence punishable under Section 3(2)(va) of the Act of 1989 is non-bailable. Therefore, the schedule attached to Criminal Procedure Code will have to be seen. As per Schedule-II, if offence punishable with imprisonment for less than three years, it shall be bailable.

As per role assigned to the present appellants, offence under Section 323 of the Indian Penal Code would attract, which is punishable with imprisonment for one year and consequently, in present case the offence under Section 3(2)(va) of the Act of 1989, is bailable. Therefore, as far as Section 3(2)(va) of the Act of 1989 is concerned, bar under Section 18 of the Act of 1989 will be out of question, whereas the offence punishable under Section 3(1)(r) and 3(1)(s) are not applicable to the present appellants, therefore, the bar under Section 18 of the Act of 1989 will not be applicable to the case in hand. Considering the nature of allegations against the appellants being ladies, a case is made out for grant of anticipatory bail in favour of the appellants.

13. In view of aforesaid, the order dated 19.07.2023 passed by the learned Special Judge does not sustain in the eyes of law and, therefore, it is set aside. In the circumstances, the appeal deserves to be allowed. Hence, I pass the following order :

ORDER

(i) The appeal is allowed.

(ii) The order dated 19.07.2023 passed by the learned Special Judge, Malkapur in Criminal (Anticipatory) Bail Application

No.155/2023 (Rina Shivaji Vairalkar and Savita Fakira Vairalkar .vs. State of Maharashtra) is set aside.

(iii) In the event of arrest of the appellants in Crime No.179/2023 for offences punishable under Sections 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 3 (1) (r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station, Dhamangaon Badhe, District-Buldhana, they shall be released on bail on their executing PR bond in the sum of Rs.15,000/- each with one solvent surety in the like amount.

(iv) The appellants shall cooperate with the investigation and appear as and when directed by the Investigating Officer.

(v) The appellants shall not induce, give threat and pressurize any witnesses, who are connected with the alleged crime.

(vi) The observations made in this order are *prima facie* in nature and the Trial Court shall not get influenced by the observations made in this order.

(vii) The Secretary of the High Court Legal Services Sub-Committee, Nagpur is directed to quantify fees of the appointed counsel for respondent no.2, as per Rules.

14. The appeal stands disposed of accordingly.

(M.W. CHANDWANI, J.)