

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 869 OF 2022

APPELLANT : Bebabai @ Nirmalabai wd/o Pandhari
(Ori. Applicant) Shinde, Aged about 65 years,
Occ.: Household work / Labour Work,
R/o Pendka Patonda, Tah. Khamgaon,
District - Buldhana.

V E R S U S

RESPONDENTS :

1. State of Maharashtra
Through Police Station Officer,
Police Station, Khamgaon (Rural),
Tah. Khamgaon, District - Buldhana.
2. Raghunath s/o Shamrao Borde,
Aged about 70 years,
Occupation - Agriculturist / Labour,
R/o. Pendka Patonda,
Tah. Khamgaon, District - Buldhana.

WITH

CRIMINAL APPEAL NO. 893 OF 2022

APPELLANT : Yogesh @ Sopan Pandhari Shinde,
(Ori. Applicant) Aged about 35 years,
Occ.: Agriculturist / Labour Work,
R/o Pendka Patonda, Tah. Khamgaon,
District - Buldhana.

V E R S U S

RESPONDENTS :

1. State of Maharashtra
Through Police Station Officer,
Police Station, Khamgaon (Rural),
Tah. Khamgaon, District - Buldhana.
2. Raghunath s/o Shamrao Borde,
Aged about 70 years,
Occupation - Agriculturist / Labour,
R/o. Pendka Patonda,
Tah. Khamgaon, District - Buldhana.

Shri Sk. Sibghatullah Jagirdar, Advocate for appellants.
Shri M.J. Khan, Additional Public Prosecutor for respondent No.1.
Ms. Neerja Chaube, Advocate (Appointed) for respondent No.2.

CORAM:- VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATED : 13/01/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Admit.** Heard finally with the consent of learned counsel appearing for the parties.
2. Since both appeals arise out of same crime, we prefer to hear and decide them together for the sake of convenience.
3. The appellant/accused - Bebabai @ Nirmalabai wd/o Pandhari Shinde in Criminal Appeal No.869/2022 is seeking pre-arrest bail in terms of Section 438 of Code of Criminal Procedure, whilst another appellant/accused - Yogesh @ Sopan Pandhari Shinde in Criminal Appeal No.893/2022 is seeking regular bail in terms of Section 439 of the Code of Criminal Procedure.
4. Both bail applications have been rejected by the Trial Court vide separate orders dated 02/12/2022. The appellants/accused are also charged for the offence punishable under Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "SCST Act"), therefore, appeals in terms of Section 14-A of the SCST Act. Since the appointed counsel is for respondent No.2 - Raghunath s/o Shamrao Borde in Appeal No.893/2022, she is also appointed in sister Criminal Appeal No.869/2022.

5. It is dispute between the neighbourers at the instance of grazing cattle. The Informant Raghunath Borde has lodged report on 17/11/2022 regarding the occurrence. It is his contention that on that day, in the morning at around 7.00 a.m., he was standing at his door step brushing his teeth. At that time, appellant - Yogesh @ Sopan Pandhari Shinde who is his neighbourer started to abuse. Suddenly, appellant - Yogesh brought stick from his house and dealt stick blows at his hand and knee causing serious injury. The informant stated that his family members have gathered on the spot for his rescue. However, appellant - Bebabai @ Nirmalabai wd/o Pandhari Shinde also came with her daughter and dealt fist blows and therefore, the report.

6. The police have registered C.R.No.388/2022 for the offence punishable under Sections 323, 326, 504 read with Section 34 of the Indian Penal Code and for the offence punishable under Section 3(2)(va) of the SCST Act against the appellant - Yogesh @ Sopan Pandhari Shinde and appellant - Bebabai @ Nirmalabai wd/o Pandhari Shinde. As referred above, appellant- Bebabai applied for pre-arrest bail whilst after arrest, appellant - Yogesh applied for regular bail, but both remained unsuccessful.

7. Learned counsel appearing for appellants would submit that the incident was outcome of sudden quarrel between the neighbourers. He would submit that the informant - Raghunath s/o Shamrao Borde and his family members have assaulted appellant - Bebabai by means of stick in which she sustained bleeding head injury. The family members of Informant Raghunath also assaulted Bebabai for which she has lodged report with the police on the very day. The police have registered crime for the offence punishable under Sections 323, 324, 504, 506 r/w Section 34 of the IPC against the family members of the informant Raghunath. It is his contention that though Bebabai initially went to the police soon after the occurrence, her report was not registered, but she was sent for medical examination. That is why the report of Raghunath got registered earlier. We have seen that the report of Raghunath was registered on 17/11/2022 at 1.40 p.m. whilst report lodged by Bebabai was registered on the very day at 2.35 p.m. In both police reports, the place of occurrence and time is one and the same. Therefore, the time gap between two reports carries no meaning, but it is evident that both are rival cases arising out of same occurrence.

8. We have gone through the injury certificate of Raghunath, which discloses that he has received two injuries, one

at knee and one at forearm, out of which, there appears to be fracture at forearm. It is submitted that Raghunath was discharged from hospital on the very day, which statement has not been disputed by other side. The appellant - Yogesh was arrested on 18/11/2022 and for near about two months, he is in jail.

9. Learned APP has submitted that the charge sheet has already been filed on 10/01/2023. We find no reason to curtail the liberty of Yogesh since he has already undergone the process of interrogation and now, investigation is complete. Since the parties are neighbourers, we deem it appropriate to impose certain conditions on appellant - Yogesh while releasing him on bail so that the parties would cool down.

10. As regards to appellant - Bebabai @ Nirmalabai wd/o Pandhari Shinde is concerned, the allegations are about giving fist blows and kicks to Raghunath. The said allegations have to be tested on the anvil of counter FIR, in which Bebabai has sustained bleeding head injury of which photograph as well as medical certificate has been produced. Prima faice, there is no convincing material to support the allegation levelled against appellant - Bebabai @ Nirmalabai wd/o Pandhari Shinde. This Court, while granting interim protection to Bebabai, has expressed that prima facie, no offence is made out against Bebabai under the provisions

of SCST Act. We see no additional feature to think otherwise, as the main assault was made by Yogesh. Having regard to above facts, we also deem it appropriate to protect the liberty of appellant - Bebabai on certain terms.

11. In view of the above, we pass the following order :-

i] Criminal Appeal Nos.893/2022 and 869/2022 are allowed allowed.

ii] The impugned orders dated 02/12/2022 passed by Additional Sessions Judge, Khamgaon, District Buldhana in RBA No.550/2022 and ABA No.555/2022 are hereby quashed and set aside.

iii] The interim order dated 14/12/2022 passed by this Court in Criminal Appeal No.869/2022 is hereby made absolute on condition that the appellant - Bebabai @ Nirmalabai wd/o Pandhari Shinde shall not indulge into similar activities or tamper the prosecution evidence in any manner.

iv] The appellant - Yogesh @ Sopan Pandhari Shinde in Criminal Appeal No.893/2022 is released on bail on furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.

v] The appellant - Yogesh @ Sopan Pandhari Shinde shall not enter within the territorial limits of Pendka Patonda Village, Tah. Khamgaon, Dist. Buldhana for a period of three months from the date of this order.

vi] The appellant - Yogesh @ Sopan Pandhari Shinde shall not tamper the prosecution evidence, in any manner.

vii] The fees of appointed counsel be paid, as per the Rules in both appeals.

viii] Both the criminal appeals are disposed of accordingly.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

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