



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 57 OF 2024

PADMAKAR BAPURAO SHINDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. Hamzakhan I. Pathan, Advocate for Appellant
Mr. D.B. Bhange, APP for Respondent Nos.1 & 3/State
Ms. Sangita Sambre, Advocate for Respondent No.2 (Appointed)
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 22nd FEBRUARY, 2024

PER COURT :

1. This appeal filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, takes exception to the order dated 02/01/2024, passed by learned Additional Sessions Judge, Kandhar, in Criminal Bail Application No. 246/2023, thereby rejecting anticipatory bail to appellants in C.R. No.185/2023, registered with Osmanagar Police Station, Kandhar, Dist. Nanded, for offence punishable under Sections 323, 504, 506 r/w 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Respondent No.2 lodged FIR on 14/12/2023 alleging that on 10/12/2023 at about 09:30 a.m. informant found that stones which were on the boundary of informant and appellants' agricultural field were thrown in his agricultural field by appellants.

When respondent No.2 questioned them, appellants assaulted and abused him by taking name of his caste. Anticipatory bail application filed by appellants is rejected by the Sessions Court. Hence, present appeal.

3. Heard learned APP for respondent Nos.1 and 3 - State, learned advocate for appellants and learned advocate for respondent No.2. Perused the investigation papers.

4. There is a delay of about four days in lodging FIR which is not explained by informant. It is the case of appellants that, in fact, informant had broken *bandh* / boundary and oral complaint to that effect was lodged with Tanta Mukti Samiti, Donwada, Tal. Loha, Dist. Nanded. President of Tanta Mukti Samiti called appellant Padmakar Bapurao Shinde and informant to settle the matter, however, informant refused to settle the matter and threatened that he would see them. Thereafter, present FIR appears to have been lodged.

5. From the FIR as well as investigation papers, it is clear that incident has taken place in the field, and it is not witnessed by anybody else. In that view of the matter, *prima facie*, offence under Atrocities Act is not made out, hence, bar under Section 18 would not be applicable to the facts of the present case. Injury certificate also does not *prima facie* support the allegations of assault made by

appellants.

6. Nothing is to be recovered from appellants. Therefore, their pre-trial custodial detention is not necessary in the facts of the present case.

7. In the result, appeal is allowed by confirming interim protection granted to appellants by order dated 17th January, 2024. Impugned order dated 02/01/2024, passed by learned Additional Sessions Judge, Kandhar, in Criminal Bail Application No.246/2023, is hereby quashed and set aside.

8. Fees of learned advocate appointed to represent respondent No.2 be paid by the High Court Legal Services, Sub-Committee, Aurangabad, as per the schedule, within a period of four weeks.

(NITIN B. SURYAWANSHI, J.)