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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.242 OF 2024

Nandu Bhima Ghumare and Another

APPELLANTS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

AND

CRIMINAL APPEAL NO.243 OF 2024

Bhagirath Nandu Ghumare

APPELLANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....

Mr. Vikram s. Undre, Advocate for the appellants

Mrs. S. S. Joshi, APP for respondent - State

Ms. Rutuja Jakhade, Advocate for respondent No.3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 24th APRIL, 2024

ORDER :

1. Learned advocate for appellants submits that during the pendency of present criminal appeals, appellant No.1 in Criminal Appeal No. 242 of 2024, Nandu Bhima Ghumare is arrested.
2. Hence, Criminal Appeal No. 242 of 2024, to the extent of appellant No.1 Nandu Bhima Ghumare is disposed of as infructuous.
3. Appellants apprehend arrest in connection with Crime No.

24 of 2024 registered with Beed Rural Police Station, District - Beed for offence punishable under sections 354, 354 (A), 324, 323, 504, 506, 34 of Indian Penal Code and u/s 3(1) (r) (s), 3 (1) (2) (I) (ii), 3 (2) (va) of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act.

4. Informant lodged FIR on 29th January, 2024 alleging that on 28th January, 2024, at about 5.30 p.m. she, along with her son Shubham, daughter in law Ashwini and grand children, was going to house from their agricultural field along with goats. At that time, accused abused them in the name of their caste and assaulted her son Shubham with stick. Accused also assaulted informant by means of fist and kick blows and also outraged her modesty. Criminal Bail Applications No. 152 of 2024 and 134 of 2024 filed by appellants for anticipatory bail are rejected by Trial Court. Hence, these appeals.

5. Heard learned advocate for appellants, learned APP for the State and learned advocate for respondent No.3 - informant. Perused the papers of investigation.

6. Specific role is attributed to appellant Rushikesh in the FIR that he assaulted son of informant - Shubham with stick on head and near right eye. Injury certificate of Shubham supports said allegation. Faced with this situation, learned advocate for

appellants, seeks permission to withdraw appeal to the extent of appellant Rushikesh. Permission granted. Criminal Appeal No. 242 of 2024 to the extent of appellant No.2 Rushikesh Charandas Kale, is dismissed as withdrawn.

7. So far as appellant in Criminal Appeal No. 242 of 2024, Bhagirath is concerned, it is alleged in the FIR that he assaulted Shubham with fist and kick blows. Since it is alleged in the FIR that 3 accused persons, in chorus, have abused informant and her family members in the name of caste, said allegations are *prima faice*, unbelievable and, therefore, *prima facie*, offence under the Atrocities Act is not attracted to the present case. Hence, bar under section 18 of the Atrocities Act would not be applicable.

8. Allegations made against appellant Bhagirath are *prima facie*, not supported by injury certificates. Besides, FIR at Crime No. 25 of 2024 is registered against informant and her sons, at the instance of Vijubai Nandkumar Ghumare, mother of appellant Bhagirath. Over implication of appellant Bhagirath cannot be ruled out at this stage. Nothing is to be recovered from him. Therefore, pretrial custodial detention of appellant Bhagirath is not necessary. In the result, following order:

ORDER

- A. Criminal Appeal No. 242 of 2024 to the extent of appellant No.1 Nandu Bhima Ghumare is disposed of as infuctuous and is dismissed as withdrawn to the extent of appellant No.2 Rushikesh Charandas Kale
- B. Criminal Appeal No. 243 of 2024 is allowed.
- C. Impugned order dated 23rd February, 2024 passed by learned Additional Sessions Judge-2 Beed, in Criminal Bail Application No.134 of 2024 is quashed and set aside.
- D. In the event of arrest of appellant Bhagirath Nandu Ghumare in connection with Crime No. 24 of 2024 registered with Beed Rural Police Station, District - Beed, he be released on bail, on executing Personal Bond and Surety Bond of Rs.15,000/- with one surety in the like amount.
- E. Till filing of charge sheet, appellant Bhagirath Nandu Ghumare shall attend the concerned police station as and when called by the Investigating Officer.
- F. Learned advocate appointed for respondent No.3 be paid fees as per schedule, within four weeks.

[NITIN B. SURYAWANSHI]
JUDGE