



(1)

901criapl506.24

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

901 CRIMINAL APPEAL NO. 506 OF 2024

GANESH HONAJI HOLKAR AND OTHER

....Appellants

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....Respondents

Mr. Girish K. Naik Thigale, Advocate for the appellants
Mr. A. J. Jagtap, Advocate for respondent No.3 (Appointed)
Mr. S. B. Jadhav, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 15th OCTOBER, 2024

P. C.

1. At the outset the learned advocate for the appellants seeks leave to withdraw the appeal to the extent of appellant Nos. 1-Ganesh Holkar and appellant No.2-Rushikesh Holkar. Leave is granted.

2. Heard the appeal for appellant Nos. 3 and 4.

3. The appellants are arrayed in FIR bearing No.

0141/2024 registered with Basmat Rural Police Station, Dist. Hingoli for the offences punishable under Sections 323, 324, 504 and 506 read with section 34 of the Indian Penal Code (for short the 'IPC') and sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short the 'Atrocities Act').

4. In the FIR the allegations made against the present appellants that appellant Nos. 1 and 2 have assaulted the informant. The appellant No.2 abused them in the name of caste.

5. The learned advocate for the appellants vehemently argued that there is no specific roll alleged against the present appellants. The allegations against Dnyaneshwar is that he has also taken part in the said incident. There is no weapons used in the said incident. The appellant Nos. 3 and 4 are arrayed only because they happen to be relatives to the other accused persons. He submits that the learned trial court has failed to

appreciate that there is no specific role alleged against the appellant Nos. 3 and 4. Thus, he prayed for allowing the appeal and to release the appellant Nos. 3 and 4 on bail in case of their arrest in connection with FIR bearing No. 0141/2024 for the offences alleged therein.

6. The appeal is vehemently opposed by the learned APP and the learned advocate for the respondent No.3.

7. The learned APP has produced on record report submitted by the office of the Sub-Divisional Police Officer showing that the appellants have not cooperated with the investigation. They never remained present before the police for investigation. He further submits the medical certificate shows that the informant received grievous injuries i.e. contusion caused by hard and blunt object. There are statements of at least three eye witnesses who have stated about the incident. He further pointed out that the incident has taken place at the public place. He, thus, prays for dismissal of the appeal.

8. The learned advocate Mr. Jagtap also vehemently opposed the appeal. He submits that incident started because of harassment to the sister of the complainant. When the complainant asked about the same, the accused got annoyed and assaulted the informant. There are two incidents which are alleged in the FIR. It is also submitted that the accused and the informant are residing in the same location. If the appellants are protected by interim order, there is every likelihood of repeating of the same incident.

9. Considering the over all material, this court finds that main allegations are against other accused. There is no specific allegations against the appellant Nos. 3 and 4. This court has also considered that these applicants were protected by interim order passed by this court dated 05-06-2024.

10. On going through the impugned order, this court finds that in the said order there is no much discussion. The

learned trial court has not considered the role of each of the accused persons and has straightly rejected the application. It was expected by the learned trial court that the role of the each appellants ought to have been considered individually. Therefore, the impugned order needs to be modified. Hence, the following order:

ORDER

- a] The appeal stands partly allowed.
- b] The appeal stands withdrawn to the extent of appellant Nos. 1 and 2.
- c] The appellant No. 3-Dnyaneshwar Holkar and appellant No.4- Arjun Holkdar shall be released on bail in the event of their arrest on the same terms and conditions as per order dated 05-06-2024.
- d] The appeal stands disposed off.
- e] The learned advocate Mr. Jagtap, was appointed through Legal Aid. He shall be entitled to receive the fees as per rules.

[KISHORE C. SANT, J.]