



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 687 OF 2023

1. Iftekharoddin Nisaroddin Siddiqui
[In FIR mentioned as Iftekhar Siddiqui]
2. Intesaroddin Nisaroddin SiddiquiAppellants

VERSUS

The State Of Maharashtra And OthersRespondents

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Mr. S.J. Salunke, Advocate for appellants.
Mr. S.B. Jadhav, APP for respondents No. 1 and 2.
Mr. Rajendra Deshmukh, Senior Advocate i/by. Mr. Dhiraj
Jethliya, Advocate for respondent No. 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th MARCH, 2024

ORDER :

1. This appeal filed under section 14A(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, takes exception to the order dated 25.07.2023, passed by learned Special Judge, Gangakhed, Dist. Parbhani, in Cri.M.A. (Bail) No. 124/2021, thereby rejecting anticipatory bail application filed by appellants.

2. Vishal Siddharth Jagatkar lodged FIR stating that on 24.06.2023 at 6.00 pm, he along with his friend Sayyed Naser Sayyed Shakil went to watch cricket match at Idgaha Maidan. At 6.30 pm, when he was watching match, appellant No. 1 came in

four wheeler and abused him in the name of his caste. He assaulted informant by rod on back side of head. Co-accused Rehan assaulted with fist blows and appellant No. 2- Intesaroddin assaulted him on leg by means of stick so also assaulted his friend Naser. Amjad Khan and Sachin Kale pacified the fight.

3. Heard learned advocate for appellants, learned APP for respondent-State and learned senior advocate for informant. Perused the investigation papers.

4. Cross FIR is lodged at the instance of one Vaijnath Ufade in respect of same incident in question alleging that on 24.06.2023 at 6.30 pm, he along with his friend Iftesaar Siddiqui, Rehan Siddiqui, Sulshan Waghmare were playing cricket at Idgah Maindan, Kodri Road, Gangakhed. At that time, Raees Shaikh and Saddam Sayyed came there on motorcycle and abused him in the name of his caste. They also called their friend who arrived on the spot with sword, iron rod and sticks. Saddam Sayyed came with sword and by taking name of his caste assaulted with sword. Ansar Sayyed, Raees Shaikh, Sameer Pasha, Naser Sayyed assaulted with sticks and rod. On the basis of said FIR, C.R. No. 270/2023 is registered against 1.

Raees Shaikh 2. Saddam Sayyed 3. Ansar Sayyed 4. Sameer Pasha and 5. Nased Sayyed, under sections 307, 324, 323, 143, 147, 148, 149, 504, 506 of IPC, under section 3(1)(r), 3(1)(s), 3(2), 3(v) of Atrocity Act, under section 4/25 of Arms Act and under section 135 of Maharashtra Police Act.

In this crime, accused persons were granted anticipatory bail by Division Bench of this Court in Criminal Appeal No. 636 of 2023, vide order dated 31.08.2023.

5. According to appellants so as to give counterblast to said FIR, present FIR is lodged at the instance of accused persons named in C.R. No. 270/2023. Perusal of FIR and material collected during the investigation, *prima facie*, do not indicate as to how appellants were knowing caste of informant. Therefore, there appears substance in the contention of appellants that they are falsely implicated at the instance of accused persons in C.R. No. 270/2023. Therefore, *prima facie*, offences under Atrocity Act are not made out against appellants. Hence, bar under section 18 of Atrocity Act would not apply to the present case.

6. Appellants were granted interim protection and they have co-operated in the investigation. Iron rod allegedly used in

the crime is recovered. Perusal of injury certificates do not support the contention of prosecution that wooden log was used to assault informant.

7. FIR is belatedly filed after two days. Since, offence is registered on 26.06.2023, investigation appears to be almost complete. Nothing is to be recovered from appellants, therefore, pre-trial custodial detention of appellants is not necessary in the facts of the present case.

8. Criminal Appeal is therefore allowed by setting aside order dated order dated 25.07.2023, passed by learned Special Judge, Gangakhed, Dist. Parbhani, in Cri.M.A.(Bail) No. 124/2021.

9. Interim protection granted to appellants by order dated 7th August, 2023, is hereby confirmed.

10. Till filing of charge sheet, appellant shall attend the concerned police station every alternate day, between 10.00 am to 12.00 noon and shall co-operate in the investigation.

11. Appellants shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI, J.]