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925criapl802.23

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

925 CRIMINAL APPEAL NO.802 OF 2023

1. Sanjay Dattu Sabale **...APPELLANTS**
2. Gorakh Vijay Sable
3. Tushar Vijay Sable

VERSUS

1. The State of Maharashtra **...RESPONDENTS**
Through the Police Station Officer,
Akole Police Station, Tq. Akole
Dist. Ahmednagar
2. Parvata Shankar Shengal

**AND
CRIMINAL APPEAL NO.806 OF 2023**

1. Gangubai Vijay Sable **...APPELLANTS**
2. Mangal Sanjay Sable
3. Sunita Ramdas Sable
4. Shobha Ramdas Sable
5. Rahibai Dattu Sable

VERSUS

1. The State of Maharashtra **...RESPONDENTS**
Through the Police Station Officer
Akole Police Station, Tq.Akole

Dist. Ahmednagar

2. Parvata Shankar Shengal

Mr. Santosh C. Bhosle, Advocate for the appellants

Mr. N. B. Patil, APP for the respondents/State

Mr. S. V. Suryawanshi, Advocate for respondent No.2
(appointed)

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th JANUARY, 2024

P. C.

1. These appeals are directed against the order passed by the learned Additional Sessions Judge, Sangamner in Bail Application No.228/2023 & 229/2023 thereby rejecting the applications filed by the appellants under Section 438 of the Code of Criminal Procedure.

2. FIR is lodged by Parvata Shengal alleging that on 08-12-2022 in the evening while she was returning alongwith her colleagues from the field of Balu Sawalaram Sable and while they were crossing the field Ramdads Dattu Sable, Sanjay Dattu Sable, Gorakh Dattu Sable, Gangubai Vijay Sable, Mangal Sanjay Sable, Sunita Ramdas Sable, Shobha Somnath Sable, Tushar

Vijay Sable, Rahibai Dattu Sable all belonging to Maratha Caste came there and stopped the informant and others and called the name of informant's caste and told them that way on which they were proceeding is not made for them and they should not use said way. When informant told them that it is a public road and anybody can pass through the said road, the accused persons were enraged by the said answer. Sanjay picked up a stone and pelted on left hand of Sakhubai. Ramdas tore her gown. Gorakh, Gangubai, Mangal, Sunita, Shobha, Tushar and Rahibai all assaulted the informant and others with kicks and fists blows. At that time Gorakh, Mangesh and Bhanudas all resident of Bhorl came there and intervened. All accused persons called them by name of their caste and threatened them to kill.

3. Appellants approached the Sessions Court for anticipatory bail. On rejection of their applications, present appeal is filed.

4. Heard learned advocate for appellants, learned APP

for State and learned advocate for informant.

5. It appears that there is a dispute of right of way between accused and informant. Compromise deed recorded in the year 2004 between informant's side and accused side. Thereafter, at the instance of informant's side Tahasildar has passed order under Section 5 of the Mamlatdar's Court Act and directed Dattu Nagu Sable to remove obstruction on the way, so as to enable informant's side to pass through the same. Revision application filed by the side of the accused was rejected by the Sub-Divisional Magistrate.

6. Sunita Ramdas Sable lodged FIR in respect of the same incident, on 09-12-2022 against Mangesh, Sopan, Damu, Kundalik, Gorakh, Bhanudas, and Sandip all resident of Bori which is registered as Crime No. 576/2022 for the offences punishable under Sections 141, 143, 147, 149, 324, 323, 504, 506 of the Indian Penal Code alleging that the accused persons assaulted informant and others.

7. Perusal of papers of the said crime indicates that appellant Sanjay, Rahibai, Vaibhav and Shobha have suffered injuries in the said incident. Though the injuries are stated to be simple, fact remains that the appellants have suffered injuries in the incident for which present FIR is lodged.

8. Perusal of the papers of the investigation in the present crime further show that the informant's side has not suffered any injuries. Therefore, prima-facie false implication of appellants with a view to give counter blast to the FIR lodged by the appellants at this stage, cannot be ruled out. Prima-facie this court is of the opinion that on account of previous dispute and with a view to give counter blast to the FIR lodged by appellants' side, informant has malafide implicated appellants in the present crime. In this view of the matter, in the peculiar facts of the present case bar under section 18 would not get attracted in the present matter.

9. The appeals are therefore, allowed by confirming the interim protection granted by the order dated 16-10-2023 till filing of the charge-sheet. The appellants shall attend the concern police station as and when called by the Investigating Officer. The appellants shall co-operate in the investigation. The appellants shall not tamper with the prosecution evidence.

10. Fees be quantified to learned advocate for respondent No.2 as per schedule within four weeks.

[NITIN B. SURYAWANSHI, J.]