



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 826 OF 2023

1. Seema W/o Arvind Gerkar
2. Santosh S/o Tryambak Jumade ... Appellants

VERSUS

The Superintendent Of Police
And Others ... Respondents

.....
Mr. Vaibhav U. Pawar, Advocate for Appellant
Mr. S.P. Sonpawale, APP for Respondent Nos.1 and 2 – State
Mr. L.B. Deshmukh, Advocate for Respondent No.3-Informant
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 02nd APRIL, 2024

ORDER :

1. This appeal filed under section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, challenges order dated 24.08.2023 passed by learned Additional Sessions Judge, Parbhani, in Criminal Bail Application No. 641 of 2023, thereby rejecting anticipatory bail application filed by appellants.

2. Respondent no.3 lodged FIR with Bori Police Station, District-Parbhani, which is registered at C.R. No.0132 of 2023 against 7 accused persons for offences punishable under sections 324, 143, 147, 148, 149 of the Indian Penal Code and

under sections 3(1)(r) and 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, alleging that when he went to cultivate the land of Raosaheb Uttamrao Gadade, in one Bolero vehicle, Munjabhau Gerkar, Arvind Gerkar, Munja Jumade, Seema Gerkar (appellant no.1), Subhash Gerkar, Arjun Jumade, Santosh Jumade (appellant no.2) came there in Bolero vehicle and seeing informant's blue colour shirt, hurled castiest abuses at him. Munjabhau Gerkar Arvind Gerkar and Muja Jumade assaulted the informant with stick and iron rod. Raosaheb Gadade, his wife Vijaymala Gadade and Radha Bochara were assaulted by appellants and Subhash as well as Arjun Jumade. After registration of FIR, appellants preferred anticipatory bail application no.641 of 2023, which is rejected by the trial Court. Hence, the present appeal.

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

4. Charge-sheet in the present crime is filed on 07.07.2023 and the case is numbered as Special case No.2 of 2024. Weapons allegedly used in the crime are already seized. Perusal of injury certificates of injured persons reveal that they

have suffered simple injuries like contusion, abrasion and blunt trauma. Five accused persons named in the FIR namely, Munjabhau Gerkar, Arvind Gerkar, Munjaji Jumade, Subhash Gerkar and Arjun Jumade were arrested and they are released on regular bail.

5. Allegations of taking the name of caste and giving abuses in chorus, *prima facie* are unbelievable, as the accused persons has no occasion to know about the caste of informant. Raosaheb Gadade has filed R.C.S. No.67/2022 against Sahebrao Bapurao Gerkar, Mohan Gerkar and Balu Gerka. In the said matter, as is pointed out by learned advocate for respondent no.3, interim injunction is passed in favour of Raosaheb Gadade, thereby prohibiting defendants from entering into the disputed land i.e. Gat No.264 situated at *Mouje*, Adgaon Gadade, Taluka-Selu, District-Parbhani. In the light of above facts, *prima facie*, offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, are not made out from the narration in the FIR. Hence, bar under section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, would not be applicable.

6. Considering the fact that charge-sheet is filed and weapons allegedly used in the crime are recovered and considering the gender of appellant no.1, appellants' pre-trial custodial detention is not necessary. The trial is not likely to commence and conclude in near future, the appeal therefore deserves to be allowed. Hence, the following order:

ORDER

- (i) Criminal Appeal is allowed
- (ii) Impugned order dated 24.08.2023 passed by learned Additional Sessions Judge, Parbhani, in Criminal Bail Application No. 641 of 2023, is hereby quashed and set aside.
- (iii) Interim protection granted to appellants by order dated 13.09.2023, is hereby confirmed.

[NITIN B. SURYAWANSHI]
JUDGE