



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

CRIMINAL APPEAL NO. 976 OF 2023

KAPIL SURESH LANDGE

VERSUS

THE COMMISSIONER OF POLICE AND OTHERS

...

Mr. Manikrao L. Wankhade, Advocate for Appellant

Mr. S.P. Sonpawale, APP for Respondent Nos.1 & 2/State

Mr. Ajaysinha U. Chandel, Advocate for Respondent No.3

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WITH

CRIMINAL APPEAL NO. 942 OF 2023

DR. BHAUSAHEB DHANJI GONGE AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Himmatsinh D. Deshmukh, Advocate for Appellant

Mr. S.P. Sonpawale, APP for Respondents/State

Mr. Ajaysinha U. Chandel, Advocate for Respondent No.2

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04th APRIL, 2024

PER COURT :

1. Leave to amend the prayer clause in Criminal Appeal No. 976/2023.

2. Both these appeals take exception to the orders dated 03/10/2023 and 10/10/2023 passed by learned Additional Sessions Judge / Special Judge, Aurangabad, in Criminal Bail Application Nos.2050/2023 and 2061/2023, thereby rejecting anticipatory bail to appellants in C.R. No.178/2023, registered with Osmanpura Police Station, Aurangabad, for offence punishable under Sections 304 of

the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. Informant lodged FIR against appellants alleging that, on 06/05/2021, his elder brother Santosh was having cold and fever and was feeling weakness, hence, informant contacted neighbour Kapil Landge. Kapil told that he is a Doctor at Ashirwad Hospital, Devagiri Colony, Mukundwadi. Dr. B. D. Gonge Patil runs Covid Center there and he is general physician surgeon. All the patients treated by him are cured. He therefore, told informant to bring his brother and father to Ashirwad Hospital. Informant admitted his brother and father in Ashirwad Hospital. Dr. B. D. Gonge Patil, Dr. Kapil Suresh Landge and Dr. Anjali B. Gonge Patil treated his brother and father. On 07/05/2021, Dr. B. D. Gonge Patil and Dr. Kapil Landge assured that 100% his brother and father will be cured. On that day, health of informant's brother deteriorated. Informant, therefore, requested Dr. B. D. Gonge Patil to give oxygen to his brother. At that time, Dr. B. D. Gonge Patil asked him where he stays and what is his caste. Informant disclosed his residential address and that he belongs to schedule caste. Then Dr. Gonge Patil got angry and took name of informant's caste and told him not to teach the Doctors and abused him in the name of caste. Informant told the said incident to Kapil Landge. Kapil told informant that his father

and brother will be cured and if informant wants both of them to be safe he should not interfere and they are giving best possible treatment to both of them. Thereafter, health of his brother went on deteriorating. On 10/05/2021, when informant told Dr. B. D. Gonge that his brother's condition is serious, Dr. B. D. Gonge abused him in the name of caste and told that he knows what is to be done. He told informant that he may take his brother to MGM Hospital and he is not in a position to treat his brother. By saying so, Dr. B. D. Gonge Patil tried to expel informant and his brother from the hospital. Thereafter, on 11/05/2021 at about 01:00 a.m. informant's brother was lying still, his heartbeats were also not traceable. Informant, therefore, contacted Dr. B. D. Gonge Patil, Dr. Anjali Gonge and Dr. Kapil Landge. At that time, Dr. Anjali Gonge and Dr. B. D. Gonge Patil abused informant in the name of caste. They went near his brother and told him not to act smart and to take his brother to Ghati Hospital and he will make necessary arrangements. Informant and his brother along with staff of Ashirwad Hospital, went in an ambulance without any oxygen to Ghati Hospital. His brother had expired at Ashirwad Hospital only. On reaching Ghati Hospital, he was declared 'brought dead' at 05:15 a.m. A.D. No.13/2021 is registered. Thereafter on 15/06/2021 informant went to Ashirwad Hospital and asked for medical papers of treatment of his brother, however, appellants refused to give those documents and drove him away. Informant then got information under the R.T.I. Act and it

was disclosed that Ashirwad Clinic is not registered and Dr. B. D. Gonge Patil did not have permission to run Covid Center.

4. After registration of offence, appellants moved application for anticipatory bail, which is rejected by the trial Court. Hence, the present appeal.

5. Heard learned advocates for appellants, learned APP for State and learned advocate for informant. Perused the investigation papers.

6. Learned advocate for informant and learned APP have strenuously submitted that Ashirwad Hospital is not registered and there was no permission to run Covid center. Dr. B.D. Gonge is having B.A.M.S. Degree and his wife is having B.H.M.S. Degree. They do not have requisite skills to treat Covid patients and because of the wrong treatment given by them, patient is expired. Heavy reliance is placed by both of them on the Committee's Medical Report, wherein it is stated that "The entire treatment protocol required to be followed in suspected / positive case of COVID-19 to offer a reasonable level of care and skill in order to attempt to save the life is not seen from the records provided to this committee. In other words, all above things suggest that there is lack of reasonable degree of care and skill". Relying on this report, it is submitted that this is clear-cut case of negligence on the part of

appellants. Therefore, they are not entitled for discretionary relief of anticipatory bail.

7. Charge-sheet is filed in present crime on 27/01/2024. Informant has alleged in the FIR that he was asked his caste by Dr. B.D. Gonge, during treatment of his brother. There was no occasion for Doctor to ask caste of patient or his relatives during the treatment. The said allegation *prima facie* appears to be unbelievable. It *prima facie* appears that due to the unfortunate death of brother, FIR is lodged by informant out of grudge. Alleged abuse in the name of caste has taken place on 07/05/2021, 10/05/2021 and 11/05/2021 and the FIR is lodged on 21/09/2023. The delay is not explained. In these peculiar facts, *prima facie*, provisions of Atrocity Act are not attracted and hence, bar under Section 18 would not be applicable to the facts of the present case. Informant has conveniently not made any reference to his father who was admitted along with his brother at Ashirwad Hospital. It appears that he was cured and discharged from the said hospital.

8. So far as appellant Kapil Landge is concerned, there are no allegations against him that he has hurled caste abuses to informant.

9. Since charge-sheet is filed, investigation is complete. All the relevant documents are seized during investigation.

Appellants were granted interim protection and they have co-operated in the investigation. Trial is not likely to conclude in near future. Appellants are permanent residents of Aurangabad City and they are not likely to abscond if released on bail. Hence, pre-trial custodial detention of appellants is not necessary.

10. In the result, both the appeals are allowed by confirming interim protection granted to appellants by orders dated 19/10/2023 and 12/10/2023. Impugned orders 03/10/2023 and 10/10/2023 passed by learned Additional Sessions Judge / Special Judge, Aurangabad, in Criminal Bail Application Nos.2050/2023 and 2061/2023, are hereby quashed and set aside.

(NITIN B. SURYAWANSHI, J.)