



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

CRIMINAL APPEAL NO. 1088 OF 2023

SAURABH NANASAHEB SHIRSATH
VERSUS
THE SUPERINTENDENT OF POLICE AND OTHERS

...
WITH
CRIMINAL APPEAL NO. 963 OF 2023

KULDIP S/O HEMANT PAWAR
VERSUS
THE SUPERINTENDENT OF POLICE AND OTHERS

...
Mr. Rahul R. Karpe, Advocate for Appellants
Mr. S.B. Jadhav, APP for Respondent Nos.1 & 2
Ms. Suvarna M. Zaware, Advocate for Respondent No.3
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 02nd FEBRUARY, 2024

PER COURT :

1. Criminal Appeal No.1088/2023 is directed against order dated 27/10/2023, passed by learned Additional Sessions Judge, Ahmednagar, in Criminal Bail Application No.1751/2023, whereas Criminal Appeal No.963/2023 is directed against order dated 09/10/2023, passed by learned Additional Sessions Judge, Ahmednagar, in Criminal Bail Application No.1649/2023, thereby rejecting anticipatory bail applications of appellants.

2. FIR is lodged by informant Akash Babasaheb Borde on 15/09/2023, in short, alleging that on 14/09/2023 at about 04:00 p.m. informant along with his brothers and uncle had gone for

Darshan in temple on account of *Pola* festival. When they were returning, in the square of village Desvande, accused Vaibhav Kokate gave him a call and without any reason started beating him with kicks and fists. Along with Vaibhav, Saurabh Shirsath, Shubham Kokate, Shubham Pawar, Kuldip Pawar and Shahaji Kalapur also assaulted him. Accused Shahaji Kalapur gave blow of knife on his cheek and hands. Shubham used wooden stick for attack. He was taken to hospital. Appellants filed Criminal Bail Application Nos. 1751/2023 and 1649/2023 seeking anticipatory bail, which was rejected by learned Sessions Judge. Hence, the present appeals.

3. Heard learned advocate for appellants, learned Additional Public Prosecutor for State and learned advocate for respondent No.3. Perused the investigation papers.

4. According to appellants they are falsely implicated in present crime on account of political rivalry in village. FIR was registered on 15/09/2023 for offence punishable under Sections 143, 147, 148, 149, 323 and 324 of the Indian Penal Code. After six days allegation about utterance by taking name of caste of is leveled by informant and, therefore, Sections 3(1)(r)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, are added in the crime. According to appellants, since the election of village panchayat was due, so as to prevent appellants from participating in elections they are implicated in

present crime.

5. Learned advocate for informant vehemently opposed prayer of appellants contending that informant is seriously injured in the incident and he had to undergo operation. Active participation of appellants is there on record and therefore, they are not entitled for anticipatory bail.

6. Learned Additional Public Prosecutor by relying on the investigation papers opposed the application contending that appellants are involved in commission of serious offence.

7. There appears substance in contention of appellants that they are falsely implicated in present crime so as to prevent them from participating in election process. Aunt of appellant Kuldip Pawar is elected as a Member of Village Panchayat, Desvande, in the elections held on 16/10/2023.

8. On perusal of injury certificate, injuries suffered by informant do not support allegations made against present appellants. Injuries suffered by informant are attributed to Shahaji Kalapur and Shubham Pawar. Knife and stick are seized from accused Shahaji Kalapur and Shubham Pawar.

9. There is merit in the contention of appellants that afterthought allegations, which attract provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, are

added by informant so as to increase the gravity of offence. *Prima facie*, false implication of appellants in present crime cannot be ruled out. In these peculiar facts of this case, this Court is of the view that bar under Section 18 is not attracted to the facts of present case.

10. Investigation appears to be on the verge of completion and since nothing is to be recovered from appellants, their custodial detention is not necessary. In the result, both appeals are allowed by confirming interim protection granted to appellants by orders dated 20/10/2023 and 09/11/2023.

(NITIN B. SURYAWANSHI, J.)