



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 50 OF 2024

1. Shahaji Sheshrao Kadam
2. Siddhant Shahaji Kadam 1... Appellants

VERSUS

The State Of Maharashtra
And Others ... Respondents

WITH

CRIMINAL APPEAL NO. 1105 OF 2023

1. Baban Govardhan Kadam
2. Ashabai Baban Kadam
3. Sunita Shahji Kadam ... Appellants

VERSUS

The State Of Maharashtra
And Others ... Respondents

WITH

CRIMINAL APPEAL NO. 1190 OF 2023

Ganesh Madhukar Magar ... Appellant

VERSUS

The State Of Maharashtra
And Another ... Respondents

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Mr. S.R. Andhale h/f Mr. V.S. Undre, Advocate for Appellants in
CRI. APPEAL/50/2024 and CRI. APPEAL/1105/2023

Mr. S.J. Salgare h/f Mr. S.B. Choudhari, Advocate for Appellant
In CRI. APPEAL/1190/2023

Mr. A.R. Kale, APP for Respondent – State

Mr. S.S. Jadhavar, Advocate for Informant

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd FEBRUARY, 2024

ORDER :

1. These appeals take exceptions to orders passed by learned Special Judge, Bhoom, in Criminal Bail Application Nos. 202/2023, 192/2023, 190/2023 respectively, thereby rejecting anticipatory bail to appellants in C.R. No. 319 of 2023 registered with Washi Police Station, District Osmanabad for offences punishable under sections 143, 147, 148, 149, 323, 324 and 452 read with section 34 the Indian Penal Code and under sections 3 (1)(r), 3(1)(s), 3(2)(va) of Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act (for short, 'Atrocities Act').

2. Informant lodged FIR on 28.10.2023 alleging that on 24.10.2023 at about 8.30 p.m., when his son Amol was going towards diary, one Shahaji Kadam drove his motorcycle in rash and negligent manner and obstructed to Amol. When Amol asked him as to why he drove his motorcycle in that passion, Shahaji Kadam, Siddhant Kadam, Ganesh Magar, Dnyaneshwar Gunjal and Bharat Jadhav assaulted Amol. Thereafter, at 9.30 p.m. Amol came home and told that he is beaten by said persons. After some time, Shahaji Shesherao Kadam, Siddhant Shahaji Kadam, Ganesh Madhukar Magar, Baban Govardhan Kadam, Ashabai Baban Kadam, Sunita Shahaji Kadam all

resident of Kanheri came at the house of informant and by taking name of his caste asked him where is his son and abused him. Shahaji Kadam and Siddhant Kadam assaulted informant with motorcycle chain on back, neck and both hands. Other accused assaulted Amol and informant's wife by fist and kick blows and wooden stick. They also threatened informant and his family by taking name of caste. Appellants, on registration of offence, filed Criminal Bail Application Nos. 202/2023, 192/2023, 190/2023 respectively, which are rejected by the Sessions Court. Hence the present appeals.

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

4. There is unexplained delay of four days in lodging FIR. Perusal of injury certificates of informant and his son Amol show that Amol has suffered contusion over occipital region, a simple injury caused by hard and blunt object and blunt trauma on left ear. Informant has suffered bruises on upper part of back, contusion on left hand, abrasion on right elbow region and blunt trauma on right elbow region, which are caused by hard and blunt objects and all injuries are stated to be simple.

5. It is alleged in the FIR as well as in the statement of Amol and informant's wife that all the accused persons in chorus have taken the name of caste and have insulted informant's family. It is *prima facie* unbelievable. There do not appear any eye witness to the alleged incident and no injuries caused by chain are found on the person of informant though informant, his son Amol and his wife have emphasized the fact that Shahaji Kadam and Siddhant Kadam have caused injuries by chain on the person of informant. It therefore *prima facie* appears that allegations of intentional insult are levelled only to increase the gravity of offence. In these facts, bar under section 18 of the Atrocities Act would not be attracted. Appeals therefore deserve to be allowed. Hence , the following order.

ORDER

- (i) Appeals are allowed.
- (ii) Impugned orders dated 26.12.2023, 06.12.2023 and 09.11.2023 passed by learned Special Judge, Bhoom in Criminal Bail Application Nos.202/2023, 192/2023, 190/2023, respectively are hereby quashed and set aside.
- (iii) In the event of appellants Shahaji Sheshrao Kadam, Siddhant Shahaji Kadam, Baban Govardhan Kadam, Ashabai Baban Kadam, Sunita Shahaji Kadam and Ganesh Madhukar Magar in connection with Crime

No.319 of 2023, registered with Washi Police Station, District Osmanabad for the offences punishable under sections 452, 324, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code and under sections 3(1)(r), 3(1)(s), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they be released on bail on executing P.B. and S.B. of Rs.15,000/- each with one surety each in the like amount.

- (iv) Till filing of charge sheet, appellants Shahaji Sheshrao Kadam, Siddhant Shahaji Kadam, Baban Govardhan Kadam, and Ganesh Madhukar Magar shall attend the concerned police station on every alternate day and shall give recovery of stick allegedly used in the crime.
- (v) Appellants shall not, in any manner, influence the prosecution witnesses and/or tamper prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE