



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

CRIMINAL APPEAL NO. 1163 OF 2023

PANDURANG HARIDAS JATHAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Mr. Rahul R. Karpe, Advocate for Appellants
Mr. S.P. Sonpawale, APP for Respondent No.1/State
Ms. Mangal R. Chavan, Advocate for Respondent No.2 (Appointed)

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 30th APRIL, 2024

PER COURT :

1. This appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, takes exception to the order dated 01/12/2023, passed by learned Additional Sessions Judge, Shrigonda, in Criminal (Bail) Misc. Application No. 734/2023, thereby rejecting anticipatory bail to appellants in C.R. No.625/2023, registered with Karjat Police Station, Dist. Ahmednagar, for offence punishable under Sections 323, 327, 452, 504, 506 r/w 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(v) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Respondent No.2 lodged FIR alleging that on 29/09/2023 when he was at his home along with his mother, suddenly appellants entered the house and abused them in the name of caste and assaulted informant and his mother by fists and kick blows.

Informant was again assaulted after he came out of the house. Two unknown persons joined the assault. Threats were given that their house would be set on fire. Appellants preferred anticipatory bail application, which is rejected by trial Court. Hence, 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. It is the case of appellants that for incident dated 29/09/2023 appellant Mahadev Devidas Jathar has lodged FIR against respondent No.2 informant and his son Sani @ Pratik Rajendra Pawar, which is registered at C.R. No.624/2023 with Karjat Police Station, Dist. Ahmednagar, for offences punishable under Sections 212, 307, 324, 452, 504, 506 r/w 34 of I.P.C. So as to give counterblast to said FIR, appellants are falsely implicated in present crime.

5. Perusal of investigation papers reveal that allegation of snatching of gold ornaments of mother of informant are made belatedly and subsequently Section 327 is added. There appears substance in contention of appellants that since FIR at their instance was lodged against informant and his son, they are falsely implicated in present crime.

6. Admittedly, alleged incident has taken place inside the

house of informant, therefore, it is not in a public view. So also, allegation made by informant that both appellants have taken name of caste of informant in chorus and have abused and assaulted informant and his mother by fists and kick blows, is unbelievable. Therefore, *prima facie*, this Court is of the opinion that offence under Atrocity Act is not attracted, hence, bar under Section 18 would not be made applicable to the facts of present case.

7. Perusal of injury certificate in the crime registered at the instance of appellants shows that appellants have suffered contused lacerated wounds, whereas in the present crime injury certificate indicates that at the time of examination of Lalita Pawar she has given history of assault on 29/02/2023 at 10:30 p.m. and fall on ground (self fall) along with pain in right groin. Informant Rajendra's injury certificate reveals that he has suffered swelling and contusion on left thumb and there is blunt trauma on left ear by hand.

8. In the backdrop of aforestated facts, since offences under Atrocity Act are not attracted and as nothing is to be recovered from appellants, their pre-trial custodial detention is not warranted. Hence, the appeal is allowed by confirming interim protection granted to appellants by order dated 13/12/2023. Impugned order dated 01/12/2023, passed by learned Additional Sessions Judge, Shrigonda, in Criminal (Bail) Misc. Application No. 734/2023, is hereby quashed and set aside.

9. Till filing of charge-sheet, appellants shall attend concerned police station as and when called by investigating officer and shall co-operate in the investigation. Appellants shall not tamper prosecution evidence.

10. Fees of learned advocate appointed to represent respondent No.2 be paid by the High Court Legal Services, Sub-Committee, Aurangabad, as per the schedule, within a period of four weeks.

(NITIN B. SURYAWANSHI, J.)