



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1191 OF 2023

Umesh @ Shivaji Baba @ Babasaheb BorudeAppellant

VERSUS

The State Of Maharashtra And AnotherRespondents

.....

Mr. R.R. Karpe, Advocate for appellant.

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

Ms. Maya Jamdhade, Advocate for respondent No. 2.

WITH

CRIMINAL APPEAL NO. 1192 OF 2023

Ankush S/o Ramdas ManeAppellant

VERSUS

The State Of MaharashtraRespondent

.....

Mr. N.R. Thorat, Advocate for appellant.

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

Ms. Maya Jamdhade, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th MARCH, 2024

ORDER :

1. Appellants apprehend arrest in C.R. No. 355/2023, registered with Mirajgaon Police Station, Dist. Ahmednagar, for offences punishable under sections 306, 504, 506 r/w 34 of Indian Penal Code and under sections 3(1)(r), 3(1)(s), 3(2),

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3(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. FIR is lodged by Rahul Adagale in short alleging that his father committed suicide because of harassment and ill treatment by three accused persons named in the FIR. Appellants names appear at serial no. 1 and 2. It is alleged that informant's father had taken hand loan from appellants and in spite of repayment of the same, in fact more amount, accused were insisting that loan amount is due. They were abusing and threatening his father by taking name of his caste.

3. Upon registration of FIR, appellants preferred Cri. (Bail) M.A. Nos. 772 of 2023 and 773 of 2023 before Sessions Court, which are rejected. Hence, the present appeals.

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

5. FIR is lodged after a delay of more than 12 days. There is no explanation about the delay. So far, appellants are concerned it is not the case of informant that they have taken away the new tractor purchased by informant's father.

6. Learned advocate for informant contends that this was outcome of money lending transaction and since offence under Atrocity Act is clearly made out in the FIR, appellants are not entitled for anticipatory bail in view of bar under section 18 of Atrocity Act.

7. On going through FIR and investigation papers, *prima facie*, allegations made in the FIR do not make out ingredients of section 107 of IPC and therefore section 306 is not attracted to the facts of the present case.

8. Allegations implicating appellants appear to have been made may be because they were not ready to repay the amount due. *Prima facie*, said allegations appear to be afterthought and therefore, offence under Atrocity Act are not made out and hence, bar under section 18 of Atrocity Act would not be applied to the facts of the present case.

9. FIR is registered on 25.11.2023 and investigation to the extent of appellants appears to be almost complete, hence, their pre-trial custodial detention is not necessary. Hence, the following order:

Bhagyawant Punde

ORDER

- I) Criminal Appeals are allowed.
- II) Orders dated 14.12.2023, passed by learned Special Judge, Shrigonda, in Cri.(Bail) M.A. Nos. 772/2023 and 773 of 2023 are quashed and set aside.
- III) Interim protection granted to appellants by order dated 21.12.2023 is hereby confirmed.
- IV) Appellants shall attend the concerned police station from 20th March, 2024 to 27th March, 2024, everyday, between 10.00 am to 12.00 noon and shall co-operate in the investigation.
- V) Appellants shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI, J.]