

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.89 OF 2024****Sampat Hanmant Korvi*****....Appellant******V/S.*****The State of Maharashtra and Anr.*****....Respondents*****WITH****CRIMINAL APPEAL NO.88 OF 2024****1. Balram Babaso Korvi*****....Appellants*****2. Lakhan Sampat Korvi****3. Tulsidas Babaso Korvi*****V/S.*****The State of Maharashtra and Anr.*****....Respondents*****WITH****CRIMINAL APPEAL NO.157 OF 2024****Bhushan Suryakant Gajare*****....Appellant******V/S.*****The State of Maharashtra and Anr.*****....Respondents***

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Mr. Dhairyasheel V. Sutar with Ms Anjali Shaw, Ms Latika Kabad for the
Appellants in Appeal Nos.88 and 89 of 2024.

Mr. Dhairyasheel V. Sutar with Ms Anjali Shaw and Ms Latika Kabad i/b.
Mr. Kiran G. Kulkarni for the Appellant in Appeal No.157 of 2024.

Ms Shilpa G. Talhar, *APP for Respondent-State.*

Ms Dhruti Kapadia, *appointed Advocate for Respondent No.2.*

Mr. Prasad D. Kolape, PSI, Hupari Police Station, present.

CORAM : SANDEEP V. MARNE, J.

Dated : 23 July 2024.

P.C. :

1) These appeals are filed challenging orders dated 23 January 2024 and 8 February 2024 passed by the learned Special Judge (Atro.) Ichalkaranji, rejecting the applications filed by the Appellants for grant of pre-arrest bail in connection with C.R. No.240 of 2023 registered with Hupri Police Station, District-Kolhapur, for the offences punishable under Sections 323, 324, 504 and 506 r/w 34 of the IPC.

2) I have heard Mr. Sutar, the learned counsel for the Appellants. He would submit that the FIR itself indicates existence of civil dispute between the parties. That the FIR statement shows that there is no grievous injury caused to the Complainant or her son. He would further submit that the incident is of 30 December 2023 and the FIR is lodged on the following day i.e. 31 December 2023. He would further submit that in the initial statement, the Complainant did not refer to any caste-based abuses on the part of the Appellants. However, she subsequently grew wiser and added the allegations relating to caste-based abuses in supplementary statement recorded on 6 January 2024. Mr. Sutar would submit that Appellants are already on interim protection granted by this

Court by orders dated 1 February 2024 in Appeal Nos.88 and 89 of 2024 and 16 February 2024 in Appeal No.157 of 2024. He would submit that investigations into the crime are already complete and charge-sheet has been filed in February-2024. He would therefore submit that custodial interrogation of the Appellants is not warranted at this stage.

3) *Per contra*, Ms Talhar, the learned APP appearing for the Respondent -State would submit that the injury certificate was not available at the relevant time and since the same is now available, the Police are intending filing of supplementary charge-sheet against the Appellants, considering the nature of injury caused during commission of the crime. She would therefore submit that custodial interrogation of Appellants is still warranted notwithstanding the fact that the charge-sheet has been filed in February-2024.

4) Ms. Dhruvi Kapadia, the learned counsel appearing for Respondent No.2, who is appointed by the Court, would oppose all the three appeals. She would submit that bare reading of the FIR would indicate that accused-Bhushan Korvi has assaulted Complainant's son-Lakhan Ghate on forehead with a spade and that such an assault has resulted in grievous wound on the forehead of Lakhan Ghate. That despite giving a blow by use of spade on forehead of Lakhan Ghate, Police have failed to include offence under Section 307 of the IPC in the FIR. She would submit that there appears to be some nexus between the investigating agency and the accused, on account of which, they are sought to be let off under Sections 323 and 324 of the IPC despite use of weapon for causing wound on forehead of Lakhan Ghate. She would therefore submit that since the

police is now contemplating filing of a supplementary charge-sheet, no case is made out for grant of anticipatory bail to the Appellants. She would further submit that in the supplementary statement recorded on 6 January 2024 there are specific allegations of hurling caste-based abuses in public view and in that sense *prima facie* case is made out, bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, would be attracted in the present case. She would pray for dismissal of all the three appeals.

5) Having considered the submissions canvassed by the learned counsel for the parties, it appears that the incident had occurred on 30 December 2023, but the FIR has been lodged a day later on 31 December 2023. The FIR itself refers to existence of civil dispute relating to land between the parties. In the initial statement recorded on 31 December 2023, the Complainant did not make reference to any caste-based abuses on the part of the Appellants. However, in the supplementary statement, subsequently recorded on 6 January 2024 caste-based abuses are attributed to the Appellants. Therefore bar under Section 18 of the Act would not be attracted in the present case.

6) If the allegations in the FIR are perused, it is seen that serious allegation is only in respect of the Appellant-Bhushan Gajare, who is referred as 'Bhushan Korvi' in the FIR. The Complainant alleges that Appellant-Bhushan gave a blow by use of spade on the forehead of her son-Lakhan Ghate. During the course of hearing of the appeals, I had summoned the injury certificate and the learned APP has made the same available for Court's perusal. However, the injury certificate indicates

cause of mere simple injury to Lakhan Ghate. Therefore, though there is an allegation of giving a blow by use of spade, the injury certificate indicates cause of mere simple injuries to Lakhan Ghate.

7) The Appellants are already on interim protection granted by this Court vide orders dated 1 February 2024 and 16 February 2024. Investigations into the crime are already complete and charge-sheet has been filed in February -2024. Though the learned APP has indicated proposal for filing of supplementary charge-sheet after receipt of injury certificate, in my view, same cannot be a ground for refusing anticipatory bail to the Appellants. In any case, the proposed filing of supplementary charge-sheet would not require custodial interrogation of the Appellants.

8) The appeals accordingly succeed and I proceed to pass the following order:-

- (i) Impugned Orders dated 23 January 2024 challenged in Appeal Nos.88 of 2024 and 89 of 2024 as well as order dated 8 February 2024 challenged in Appeal No.157 of 2024 passed by the learned Special Judge (Atro.) Ichalkaranji, are set aside.
- (ii) Interim protection granted by this Court vide order dated 1 February 2024 in Appeal Nos.88 and 89 of 2024 and order dated 16 February 2024 passed in Appeal No.157 of 2024 are made absolute.
- (iii) The Appellants shall co-operate with further investigation by remaining present as and when called.

- (iv) The Appellants shall not pressurize the Complainant or any other witnesses acquainted with the facts of the case and shall not tamper with the evidence either directly or indirectly.
 - (v) Appellants shall furnish identity and address proof of themselves and of their two blood relatives while furnishing sureties.
 - (vi) Appellants shall attend Trial Court regularly unless exempted from personal appearance.
 - (vii) The Appellants shall inform their latest place of residence and mobile contact number immediately after being released on bail and/or change of residence or mobile details, if any, from time to time to the Trial Court as well as to the concerned Police Station in writing.
- 9) The appeals are accordingly allowed and disposed of.

[SANDEEP V. MARNE, J.]