

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.146 OF 2024

1) Maruti Gundu Dalvi
2) Raju Gundu Dalvi

...Appellants

Versus

The State of Maharashtra and Anr.

...Respondents

...

Mr. Ashish Vernekar i/b. Mr. Saurav Katkar for the Appellants.

Ms Shilpa Gajare Dhumal, APP for Respondent No.1-State.

Mr. Abhishek Khare for Respondent No.2.

Mr. Ramdas Jaysingh Ingawale, Dy.SP, Gadhinglaj Division, Chandgad,
present.

CORAM : SANDEEP V. MARNE, J.

DATED : 11 JUNE 2024.

PC:

1. This is an appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST Act**) challenging order dated 20 January 2024 passed by the learned Additional Sessions Judge, Gadhinglaj, rejecting the application for pre-arrest bail.

2. Respondent No.2 belongs to Hindu Mahar community. The FIR registered at his behest alleges that Respondent No.2 had utilized JCB machine of the Appellants for levelling of his agricultural land and that an amount of Rs.7,000/-was due and payable by Respondent No.2 to the Appellants towards rent for use of JCB machine. It is alleged that on 25 January 2023, the Appellants abused and assaulted Respondent No.2 and

abused him with reference to his caste in public place. The FIR alleges that Respondent No.2 suffered injuries on account of assault committed by the Appellants. Accordingly, FIR has been registered for offences punishable under Sections 324, 504 r/w 34 of the IPC and Sections 3(1)(r) and Section 3(2) (va) of the SCST Act.

3. I have heard the learned counsel appearing for the Appellants, the learned counsel appearing for Respondent No.2 and the learned APP appearing for the Respondent -State.

4. Mr. Vernekar, the learned counsel appearing for the Appellants would submit that the FIR was lodged two days after the alleged incident. He would submit that the FIR is lodged out of commercial dispute between the parties relating to non-payment of rent for the use of JCB machine. He would submit that no independent person has witnessed alleged abusing by Appellants to Respondent No.2 with reference to his caste. He would therefore submit that interim protection granted in favour of the Appellants be made absolute.

5. During the course of his extensive submissions, Mr. Abhishek Khare, the learned counsel appearing for Respondent No.2 would vehemently oppose the appeal submitting that the act of abusing with reference to caste committed by the Appellants is at public place and in public view, which is witnessed by several independent witnesses. He would invite my attention to the statement of Shri Narayan Vithoba Jadhav in this regard. He would

further submit that the Appellants are repeatedly pressurizing and threatening Respondent No.2 after grant of interim protection. That Respondent No.2 is being pressurized to withdraw the FIR. He would submit that Appellants have misused the interim protection granted by this Court and that therefore in addition to a clear case for rejection of anticipatory bail being made out, the conduct of the Appellants is otherwise such that the interim protection granted in their favour warrants immediate vacation. He would submit that even otherwise there is no provision of grant of anticipatory bail in offences involving SCST Act. He would therefore pray for dismissal of the appeal.

6. Ms Gajare, the learned APP would submit that investigation into the crime is already complete, and charge-sheet has been filed on 20 April 2023. She would further submit that the Special Court has already framed charges against the Appellants. She would complain that the Appellants have not remained present before the Special Court, on account of which their presence was required to be secured through nonailable warrant of arrest. She would accordingly oppose the present appeal.

7. I have considered the submissions advanced by the learned counsel appearing for the parties. Provisions of Sections 18 and 18A of the SCST Act have been interpreted by the Apex Court in its judgment in ***Dr. Subhash Kashinath Mahajan v. The State of Maharashtra & Anr., (2018) 6 SCC 454*** and ***Prathvi Raj Chavan vs. Union of India and Ors. in Writ Petition (C) No.1015 of 2018*** to mean that there is no absolute bar for entertainment of

application for anticipatory bail. Similarly in ***Preeti Agarwalla vs The State of GNCT of Delhi and Ors. dated 17 May 2024*** in ***Criminal Appeal No.348 of 2021*** the Apex Court has held that comments with reference to caste must be made in public view. In the present case, statements of various persons recorded by the police *prima facie* indicates that none of them have witnessed the act of abusing with reference to caste by the Appellants. Though Mr. Narayan Jadhav has given a statement with regard to assault and abusing by the Appellants to Respondent No.2, the statement does not refer to the words “*tumhi mahar, potala anna khatay kay, shen khatay*”. This aspect appears to have been taken into consideration by this Court while granting interim protection by order dated 14 February 2024. Paragraph 3 whereof reads thus:-

“The date of the incident is 25/01/2023. The FIR was registered on 27/01/2023. There are some monetary disputes between the appellants and the complainant. It is alleged that the appellants assaulted the complainant. The complainant was admitted in the hospital. The medical certificate which is at page 90 indicates that the complainant suffered from blunt trauma to the head. He complained of headache and giddiness. There are allegations that the appellants abused the complainant in the name of his caste. However, the independent witness does not say anything about the abuse in the name of caste. The charge-sheet has already been filed.”

8. *Prima facie*, therefore it appears that the incident arises out of commercial dispute with regard to alleged non-payment of rent by Respondent No.2 for use of JCB machine. In my view therefore this is a fit case where the interim protection granted by this court needs to be made absolute. At the same time, this Court cannot turn blind eye to complaints made by Mr. Khare that the Appellants are threatening and pressurising

Respondent No.2 to withdraw the complaint. Furthermore, from the submissions of the learned APP it appears that the Appellants are not remaining present before the Trial Court and their presence was required to be secured through non bailable warrant. In my view, the Appellants cannot contact Respondent No.2 in any manner for influencing or pressurising Respondent No.2 and they are also required to remain present before the Trial Court on each date of hearing.

9. I accordingly proceed to pass the following order:-

- (i) The Appeal is allowed by setting aside order dated 20 January 2024 passed by the learned Additional Sessions Judge, Gadhinglaj.
- (ii) The interim protection granted by this Court vide order dated 14 February 2024 is made absolute.
- (iii) The Appellants shall remain present before the Trial Court on each date of hearing.
- (iv) The Appellants shall not influence or pressurise Respondent No.2, members of his family as well as witnesses associated with the case in any manner.
- (v) In the event the Appellants are found to be pressurising or influencing Respondent No.2, his family members or witnesses associated with the case in any manner, this Court would be constrained to vacate the protection granted in favour of the Appellants.

10. With the above directions, the appeal is allowed and disposed of.

[SANDEEP V. MARNE, J.]