

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

CRIMINAL APPEAL NO.193 OF 2024

Ganesh Prakash Wankar & Ors.
V/S
The State of Maharashtra & Anr.

....Appellants

....Respondents

Mr. Vivesh Purwant a/w Mr. Suraj V. Gadkari *for the Appellants.*
Ms. Shilpa G. Talhar, APP *for Respondent No.1/State.*
Ms. Manisha Devkar, *appointed Advocate for Respondent No.2.*

Mr. Sagar Bhima Bhi, PC. Mohol Police Station, Solapur (R) present in Court.

CORAM: SANDEEP V. MARNE, J.
DATE : 2 JULY 2024.

P.C.:

1 This Appeal is filed under the provisions of section 14A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging the order dated 5 February 2024 passed by Special Judge, Solapur rejecting the application for anticipatory bail filed by the Appellants in connection with CR No.392 of 2023 registered with Solapur Taluka Police Station for offences punishable under sections 143, 147, 323, 504, 506 read with section 149 of the Indian Penal Code, 1860 and offences punishable under sections 3(1)(r), (s) and 3(2) (va) of the SC & ST Act.

2 Perusal of the FIR would indicate that the Complaint is essentially lodged by the first informant out of the dispute between him and Appellant

No.1 Ganesh Wankar with regard to open plot of land behind Pan shop (*panpatti*) of the husband of the first informant. It appears that the Appellant No.1 had objected the act of first informant and her husband claiming rights in respect of the said plot admeasuring 1500 square feet behind *panpatti* which according to Appellant No.1 is public property. It appears that there is previous history of litigation between the parties. In the above background, it is alleged that on 1 July 2023 the Appellants have abused and assaulted the first informant and other members of the family.

3 Mr. Purwant, the learned counsel appearing for the Appellants would submit that after lodging of FIR on 1 July 2023 notices under provisions of section 41A of the Code of Criminal Procedure (**Code**) were issued, in pursuance of which the Appellants presented themselves before the Investigating Officer on 4 July 2023. It appears that after recording of statement and completion of investigations charge-sheet has been filed on 24 August 2023. In ordinary course, there was no reason for Appellant to apply for anticipatory bail in the above circumstances. However it appears that after charge-sheet was filed before learned Sessions Judge on 28 August 2023 and summons were received by the Appellants, they apprehended that the Court may remand them to custody and accordingly applied for pre-arrest bail. This is how the pre-arrest bail sought by the Appellants came to be opposed and rejected by order dated 5 February 2024. Prima facie therefore custodial interrogation of the Appellants is not necessary in view of the issuance of notices under section 41A of the Code, completion of investigation and filing of the charge-sheet on 24 August 2023.

4 Perusal of the impugned order of the learned Special Court indicates that in paragraph 5 thereof, a specific observation is made that there is no allegation in the FIR about the Appellants hurling abuses to the informant or her family members with reference to their caste. The learned Judge has however feel it appropriate to deny pre-arrest bail on the ground that the accused caused obstructions to the informant and her family members residing in the neighborhood since they belong to lower caste.

5 Considering the nature of the allegations so also the background in which the anticipatory bail was sought by the Appellants, I am of the view that a clear case is made out for making the interim protection granted in favour of Appellants on 29 February 2024 absolute.

6 The Appeal accordingly succeeds. Order dated 5 February 2024 passed by the Special Judge, Solapur is set aside. Interim protection granted in favour of the Appellants by this Court on 29 February 2024 is made absolute subject to the following conditions:

(a) Appellants shall attend Trial Court regularly unless exempted from personal appearance.

(b) Appellants shall not pressurize the informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.

7. Needless to observe that the above findings are prima facie and the Trial Court shall not be influenced by any of the said observations made in this Appeal while deciding the case finally.

8 With the above directions, the Appeal is **allowed and disposed of**.

(SANDEEP V. MARNE, J.)

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by
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