



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

CRIMINAL APPEAL NO. 378 OF 2020

BABUSHA GIRMAL BIRAJDAR AND ORS. ..APPELLANTS
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr.Vikrant V. Phatate, for the appellants.
Ms.Manisha Jagtap, for respondent no.2.
Ms. Megha S. Bajoria, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : MARCH 19, 2024

JUDGMENT :

1. Heard learned counsel for the appellants, learned counsel for the respondent no.2 and learned APP for the State.
2. This is an appeal for quashing and setting aside the impugned order dated 09/03/2020 passed by the Additional Sessions Judge, Solapur rejecting the anticipatory bail application of the appellant in respect of the offence punishable under sections 143, 147, 148, 149, 325, 324, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 and under sections 3(1)(r), 3(1)(s), 3(1)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (for short, 'Atrocities Act") registered on 02/01/2020 vide C.R. No. 1 of 2020 with Akkalkot South police station.

3. On 17/07/2020, this Court passed the following order, the relevant portion of which reads thus:

"2. By this Appeal, the Appellants seek pre-arrest bail in connection with C.R.No. 1 of 2020 registered with the Akkalkot South Police Station, District - Solapur, for the alleged offences punishable under Sections 143, 147, 148, 149, 326, 324, 323, 504, 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) & 3(2)(va) of the Scheduled Castes and Scheduled tribes (Prevention of Atrocities) Act.

3. Learned counsel for the Appellants states that there are no specific allegations as against the Appellants. He submits that there is a general omnibus statement against the said Appellants, that the Appellants alongwith other accused assaulted the Complainant and others. He submits that the Appellants were protected by an interim order till their Application for pre-arrest bail was rejected by the learned Sessions Court. Learned counsel for the Appellants states that with respect to the incident dated 31.12.2019, the Appellants' side has also filed a complaint / FIR, as against the Respondent No. 2 and others, being C. R. No. 580 of 2019 for the alleged offences punishable under Sections 323, 324, 504, 506 etc.

4. Learned APP to produce the case papers of both the CRs i. e. C. R. No. 580 of 2019 as well as C. R. No. 1 of 2020 including the Medical Certificates of the injured witnesses / complainant in both the Crs."

4. Learned counsel opposed the appeal and submitted that the allegations made are serious. It is submitted that the appellants are responsible for the abuses in the name of

caste and they have actively participated in the assault.

5. So far as C.R. No. 580 of 2019 is concerned, the same is at the instance of Prabhu Girmal Birajdar who is an accused in the present appeal. The complainant in the present appeal had assaulted Prabhu Girmal Birajdar, the accused in the present offence. There are thus cross cases.

6. So far as present C.R. is concerned, the incident is alleged to have happened on 31/12/2019, however, FIR was lodged on 02/01/2020. There are thus cross complaints registered against each other by the appellants and the respondent no.2. The complaint on the side of the appellants is prior in point of time. The possibility of exaggerating the allegations cannot be ruled out.

7. The allegations of assault are against Sidram Prabhu Birajdar who has been enlarged on regular bail. Moreover, there are general omnibus statements made against the appellants. The appellants have joined the investigation. Prima facie, the bar under section 18 of Atrocities Act may not be attracted. In the facts and circumstances of the present case, I am inclined to confirm the interim order dated 17/07/2020 passed by this Court. Hence, the

following order :-

ORDER

(a) The appeal is allowed.

(b) The order dated 17/07/2020 passed by this Court is confirmed.

(c) The appellants be enlarged on bail, on executing P.R. bond in the sum of Rs.15,000/- each with one or two sureties in the like amount.

(d) The appellants to co-operate with the investigation.

8. The appeal is disposed of.

9. I appreciate the valuable assistance rendered by Ms. Manisha Jagtap, the learned Advocate, who appeared on behalf of respondent No.2 at my request in this proceeding. Her engagement be regularized by the Maharashtra State Legal Services Authority.

(M. S. KARNIK, J.)