



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

CRIMINAL APPEAL NO. 1427 OF 2023

1] DEEPAK VELJI BHANUSHALI

2] SAGAR VELJI BHANUSHALI

..APPELLANTS

VS.

STATE OF MAHARASHTRA AND

ANR.

..RESPONDENTS

Adv. Santosh H. Chari for the Appellants.

Adv. Megha Bajoria for Respondent No.2.

Ms. S.D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 6, 2024

JUDGMENT:

1. Heard learned counsel for the appellants, learned counsel for respondent No.2 who is appointed by this Court and learned APP for the State.

2. By this appeal the appellants pray for anticipatory bail in respect of the offence punishable under Section 509 of the Indian Penal Code and Sections 3(1)(r),(s),(u) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") registered vide C.R. No.389 of 2022 with Tulinj Police Station.

3. The statement of the complainant recorded under Section 161 of the Code of Criminal Procedure reveals that the appellants are residing in the same complex as the complainant. It is the case of the complainant that the appellants had issue with the complainant and her family members over their food preferences which was not liked by the appellants. The appellants were, therefore, every now and then abusing the complainant and her parents in the name of their caste. There are no independent witnesses to such abuse made by the appellants. Furthermore, even in the year 2017, the complainant's father had lodged a complaint against the appellants on the allegation that when the complainant's father questioned the appellants as to why they were teasing his daughter, the appellants became angry and assaulted the complainant's father. The said complaint of the year 2017 was not under the Atrocities Act but for bodily offence. There is a cross-case registered by the appellants against the complainant's father.

4. Learned APP as well as learned counsel for respondent

No.2 opposed the appeal. It is submitted that there are specific allegations relating to caste abuses and there is no reason to doubt the statement of the complainant. It is submitted that the appellants even harassed the complainant and her family members which led to the filing of a complaint in the year 2017. It is further submitted that the harassment would continue hereafter also if the appellants are granted the facility of anticipatory bail.

5. Learned counsel for the appellants, on instructions, submitted that to allay the apprehension of the complainant, the appellants are even willing to vacate the flat and stay away from the vicinity of the complainant's residence for a reasonable time. It is submitted that they will reside at some distance from the said society in which the appellants and complainant are presently residing. In the facts and circumstances of the present case, I am inclined to allow this appeal. There are no independent witnesses to the alleged incident. There are cross-cases registered by the appellants and the complainant against each other. There is a long-standing dispute between the

appellants and the complainant as can be seen from the record. The parties are on inimical terms. The possibility of allegations being exaggerated can not be ruled out. In my view, the bar under Section 18 of the Atrocities Act may not be attracted in the present case. Hence, the following order:

ORDER

- (a) The appeal is allowed.
- (b) In the event of arrest, the appellants- Deepak Velji Bhanushali and Sagar Velji Bhanushali in connection with C.R. No.389 of 2022 registered with Tulinj Police Station shall be released on bail on their furnishing P.R. Bond of Rs.15,000/- each with one or more sureties each in the like amount.
- (c) The appellants shall attend the Investigating Officer of Tulinj police station on 12/02/2024 and 13/02/2024 between 11.00 a.m. and 2.00 p.m. and thereafter as and when called. The appellants shall co-operate with the investigation.
- (d) As per the statement made on instructions, the appellants to vacate the premises in which they are presently residing within a period of 8 weeks from today. The appellants are at liberty to make an appropriate application before the trial Court for

modification of this condition after the period of 1 year. If any such application is made the trial Court shall consider the same on its own merits and in accordance with law.

(e) The appellants shall furnish their contact numbers and residential addresses to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The appellants shall not make any attempt to contact the complainant or threaten or intimidate her.

6. I appreciate the valuable assistance rendered by Advocate Megha Bajoria, who appeared on behalf of respondent No.2 in this proceeding. Her engagement may be regularized by the Maharashtra State Legal Services Authority.

7. The appeal is disposed of in the above terms.

(M. S. KARNIK, J.)