

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

CRIMINAL APPEAL NO.548 OF 2024

Rafik Hasham Mulla

...Appellant

Versus

The State of Maharashtra and
Anr.

...Respondents

**WITH
CRIMINAL APPEAL NO.378 OF 2024**

1. Sameer Rafiq Mulla
2. Saeed Rafiq Mulla

...Appellants

Versus

The State of Maharashtra and
Anr.

...Respondents

**WITH
CRIMINAL APPEAL NO.379 OF 2024**

1. Heena Yasin Mulla
2. Sharmin Salim Mulla
3. Shirin Samir Mulla
4. Saeeda Rafik Mulla

...Appellants

Versus

The State of Maharashtra and
Anr.

...Respondents

Mr. Viral Rathod *i/b. Mr. Vishwatej Jadhav for the Appellant in Appeal/548/2024.*

Ms. Tanvi Tapkire *for the Appellants in Appeal/378/2024 and Appeal/379/2024.*

Ms S.G. Talhar, APP for Respondent-State in Appeal/378/2024 and Appeal/548/2024.

Mr. Ashok Metkari, APP for Respondent No.1-State in Appeal/379/2024.

Ms. Sayli Wani for Respondent No.2 in all Appeals.

Ms. Tejaswini, IO, ACP, Naupada Division, Thane city, present.

CORAM : SANDEEP V. MARNE, J.

Dated : 14 November 2024.

P.C. :-

1) These are the Appeals under the provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST**) challenging orders dated 30 March 2024 and 13 May 2024 passed by the learned Additional Sessions Judge, Sangli rejecting the Applications filed by the Appellants for grant of pre-arrest bail in connection with C.R. No.135 of 2024 registered with Sangli (city) Police Station, District-Sangli for the offences punishable under Sections 307, 143, 147, 148, 149, 337, 504 and 506 of the Indian Penal Code, 1860 (**IPC**) and Sections 3(1)(r), 3(1)(s), 3(2)(va), 3(2)(v) of the SCST Act and Section 135 of the Maharashtra Police Act.

2) I have heard Mr. Rathod, the learned counsel appearing for the Appellant in Criminal Appeal No.548 of 2024 and Ms. Tapkire, the learned counsel appearing for the Appellants in Criminal Appeal Nos.378 of 2024 and 379 of 2024. I have also heard Ms Wani, the learned counsel appearing for Respondent No.2- Complainant and Ms Talhar and Mr. Metkari, the learned

APPs for Respondent-State in all the Appeals.

3) All the Appellants are on interim protection granted by this Court vide orders dated 10 April 2024 (Criminal Appeal No.379 of 2024), 17 April 2024 (Criminal Appeal No.378 of 2024) and 28 May 2024 (Criminal Appeal No.548 of 2024). Ms Wani would however, oppose for making the interim protection absolute contending that there is specific role assigned to each of the accused and that case does not involve omnibus allegations. That grave offence under Section 307 of the IPC is alleged against the Appellants. That the victim was required to be hospitalised on account of grievous injuries suffered by him. That the case does not involve false implication.

4) Ms. Talhar also opposes the Appeals submitting that the investigations are still incomplete against Appellants, who have not cooperated in completion of investigations by producing the clothes worn by them as well as stones used during commission of the crime. That the prosecution is yet to collect the blood samples. She would submit that there are specific allegations of caste-based utterances against Rafik and that there are eye witnesses to the incident. That the family members of the Appellants have committed assault on the other group including cause of severe head injuries to Shubham, who was badly injured. She would accordingly pray for dismissal of the Appeal.

5) It appears that there are total 9 accused in the case. The FIR statement would essentially indicate that Shubham is allegedly

hurt on account of alleged assault committed by accused No.2-Salim Rafik Mulla by use of iron rod. Salim Mulla has already been arrested and released on bail. So far as accused No.3-Yasin Rafik Mulla is concerned he is accused of injuring the son of the Complainant by pelting stone. Except these specific allegations against Salim Mulla and Yasin Mulla there are no specific allegations with regard to assault by any of the Appellants. The allegations against them are omnibus in nature. Though Appellant-Rafik Hasham Mulla is accused of making caste-based utterances, there is no specific role ascribed to him so far as the assault is concerned. It is also required to be noted that accused - Rafik Hasham Mulla is aged 68 years. Therefore, interim protection granted in his favour deserves to be made absolute. So far as Appellants in Appeal Nos.378 and 379 of 2024 are concerned, I am unable to notice any specific allegations against them with regard to alleged assault. Therefore, interim protection granted in their favour also deserves to be made absolute.

6) Ms Tapkire, in fact clarifies that Appellants in Appeal Nos.378 and 379 of 2024 have remained present before the Investigating Officer on 22 April 2024 and 23 April 2024 and have cooperated with the completion of the investigations. It is however, incomprehensible as to why prosecution has not been able to file charge-sheet against rest of the accused as the charge-sheet is apparently filed against accused Nos.2 and 3. Considering the facts and circumstances of the case, in my view interim protection granted in favour of the Appellants deserves to be made absolute.

7) The Appeal succeeds and I proceed to pass the following order:-

- (i) Orders dated 30 March 2024 and 13 May 2024 passed by the learned Additional Sessions Judge, Sangli are set aside.
- (ii) Interim protection granted in favour of the Appellants vide orders dated 10 April 2024 passed in Criminal Appeal No.379 of 2024, 17 April 2024 passed in Criminal Appeal No.378 of 2024 and 28 May 2024 passed in Criminal Appeal No.548 of 2024 are made absolute subject to the following conditions:-

- a. The Appellants shall once again remain present before the Investigating Officer on 26 November 2024 and 27 November 2024 between 11.00 a.m. to 2.00 p.m. and shall cooperate with the completion of the investigation
- b. The Appellants shall not contact the Complainant or any of the witnesses acquainted with case nor shall tamper with the evidence directly or indirectly.
- c. The Appellants shall remain present before the Trial Court on each date of hearing unless exempted from personal appearance.

8) With the above directions the Appeals are allowed and disposed of.