

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 678 OF 2024**

Subhash @ Bhaiya Abasaheb

Kshirsagar and Anr.

**....Appellants**

**V/s.**

The State of Maharashtra and Anr.

**....Respondents**

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**Mr. Ghansham Jadhav**, *for the Appellants.*

**Ms. Shilpa G. Talhar**, *APP for Respondent – State.*

**Ms. Priyanka Chavan**, *appointed Advocate for Respondent No.2.*

*Mr. Dattatray L., PSI Indapur, Police Station.*

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**CORAM : SANDEEP V. MARNE, J.**

**Date : 10 OCTOBER 2024.**

**P.C. :**

1) This Appeal is filed under provisions of section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (SC & ST Act) challenging order dated 20 June 2024 passed by Additional Sessions Judge, Baramati rejecting the application filed by the Appellants for pre-arrest bail in connection with CR No.423 of 2024 registered with Indapur Police Station for offences punishable under sections 143, 147, 148, 149, 324, 504, 506 of the Indian Penal Code, 1860 and sections 3(1)(r)(s), 3(2)(va) and 6 of the S.C. & S.T. Act and under Section 7(1)(d) of the Protection of Civil Rights Act, 1955.

2) This Court has granted interim protection in favour of the Appellant by order dated 5 July 2024 by making following observations :-

2. Perusal of the FIR would indicate that initially only the first accused Rohit Kshirasagar was named in the statement recorded on 11 May 2024. The Injured has accused Rohit Kshirasagar of assaulting him with sickle. So far as the other accused are concerned, they were initially not named in the statement dated 11 May 2024. The learned APP has drawn my attention to the supplementary statement dated 14 May 2024 of the injured in which he has named total five persons which includes the two Appellants. It appears that the statements of three eye witnesses are also recorded which prima facie indicate that only one person was carrying sickle whereas the other persons were carrying wooden logs. This prima facie contradicts the statement of the injured that two persons were carrying iron rods. Perusal of the injury certificate would indicate that cause of only two simple injuries on front side of forehead and back by hard and blunt object. So far as the accusation about reference to the caste is concerned the same is ascribed to only Rohit Kshirasagar and not to the Appellants.

3) Ms. Priyanka Chavan, the learned counsel has been appointed to represent Respondent No.2 from Legal Aid Panel. She would oppose the Appeal. I have also heard Ms. Talhar, the learned APP appearing for Respondent No.1-State.

4) It appears that the co-accused Sonu alias Pravin Vishnu Andhare & Shankar Eknath Sutar have been granted Regular Bail by this Court by order dated 30 July 2024 passed in Criminal Appeal No.695 of 2024 by passing the following order :-

(2) The prosecution story in brief is that – on 5 May 2024 the Complainant was abused by accused No.1-Rohit Kshirasagar and some altercations took place between the duo. On 11 May 2024,

accused No.1- Rohit Kshirasagar arrived with a sickle in his hand alongwith five unknown persons, two of whom were carrying iron rods and three were carrying wooden logs. That accused No.1-Rohit Kshirasagar hit the complainant with sickle on his head and when he raised his hand to save himself, Complainant suffered injuries on his left hand and the head. At that time, unknown five persons assaulted the Complainant with iron rods and wooden sticks. It is further alleged that while the Complainant was fleeing from the spot, accused No.1 chased and abused him with reference to his caste.

(3) I have heard Mr. Jadhav, the learned counsel appearing for Appellants, who would submit that the accused are not the authors of injuries suffered by Complainant. That all the offences under Indian Penal Code areailable. That the FIR does not contain any allegation with regard to caste-base abuses by Appellants and that therefore the offences under SC & ST Act do not relate to them. That accused Nos.2 and 3 are already granted interim protection by this Court in Criminal Appeal No.678 of 2024. That the entire role in the incident is ascribed to accused No.1. That the Appellants have also spent two months in custody and considering the nature of allegations levelled against them, they deserve to be enlarged on bail.

(4) Ms. Chavan, the learned counsel, appointed by this Court from the panel of Legal Aid Advocates to represent Respondent No. 2, would oppose the Appeal submitting that Appellants are named in Complainant's supplementary statement. That there is a specific allegation of Appellants assaulting Complainant. That what is granted to accused Nos. 2 and 3 is merely interim protection by this Court. That both the Appellants are residents of Indapur and therefore there is high degree of possibility of they indulging in pressurizing the Complainant. She would therefore pray for dismissal of the Appeal.

(5) Ms. Gotad, the learned APP appearing for Respondent No.1-State would also oppose the Appeal submitting that the sickle used for commission of crime is yet to be recovered. That there are specific allegations against Appellants and Complainant has identified them in his supplementary statement. She would therefore submit that since the Complainant is attacked without any reason by six persons by use of various weapons, the Application for Bail filed by the Appellants deserves to be rejected.

(6) I have considered the submissions canvassed by the learned counsel appearing for parties and have gone through the impugned order as well as the documents placed on record. Perusal of the FIR dated 11 May 2024 would indicate that the Appellants were initially not named by Complainant. However, in the supplementary statement dated 11 May 2024 he has named Appellants. It appears that statements of three eyewitnesses are also recorded, in which it is stated that only one person was carrying sickle and the rest were carrying wooden logs. This would prima facie contradict the Complainant's version that two accused were carrying iron rods. Perusal of the injury certificate would also indicate that only two simple injuries on front side of the forehead and back is caused by hard and blunt object.

(7) The main allegation is against accused No.1-Rohit Kshirasagar who was allegedly carrying sickle and allegedly assaulted Complainant with the said sickle. So far as the Appellants are concerned, the allegation is about assault by wooden sticks. All the offences alleged under the Indian Penal Code against the Appellants are bailable. The caste-based abuses are attributable solely to accused No.1 and the Appellants are apparently not associated with the allegation of caste-based abuses. Still they have been in custody for the last more than two months.

(8) Investigations in the crime are already complete and charge-sheet has been filed on 23 July 2024. The Trial is not likely to be concluded in near future. Therefore, further incarceration of Appellants is not warranted. Considering the nature of allegations and the role as ascribed to Appellants, in my view they deserve to be enlarged on bail.

5) The role ascribed to the present Appellants appear to be similar to the one ascribed to the other two accused who are released on bail by order dated 30 July 2024.

6) As observed in the order dated 5 July 2024 the caste-based utterances are not ascribed to the Appellants and

therefore bar under provisions of Section 18 of the SC&ST Act would not be attracted in the present case.

7) In that view of the matter, interim protection granted in favour of the Appellants deserves to be made absolute.

8) Accordingly, I proceed to pass the following order :-

(i) Order dated 20 June 2024 passed by Additional Sessions Judge. Baramati, District Pune, is set aside.

(ii) Interim protection granted in favour of the Appellants by order dated 5 July 2024 is made absolute subject to the following conditions :-

(a) The Appellants shall furnish identity and address proof of themselves and of their two blood relatives while furnishing sureties.

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

(c) The Appellants shall attend each date of hearing before the Trial Court, unless exempted.

9) With the above directions, the Criminal Appeal is allowed and disposed of.

**[SANDEEP V. MARNE, J.]**