

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

CRIMINAL APPEAL NO. 805 OF 2024

Salman Mushir Khan ... Appellant

Versus

State of Maharashtra and Anr. ... Respondents

WITH

CRIMINAL APPEAL NO. 813 OF 2024

Abdul Kalam Hasan Raza Shaikh ... Appellant

Versus

State of Maharashtra and Anr. ... Respondents

WITH

CRIMINAL APPEAL NO. 814 OF 2024

Nayeem Nasir Shaikh ... Appellant

Versus

State of Maharashtra and Anr. ... Respondents

WITH

CRIMINAL APPEAL NO. 804 OF 2024

Sajid Ali Mohd Shaikh ... Appellant

Versus

State of Maharashtra and Anr. ... Respondents

WITH

CRIMINAL APPEAL NO. 806 OF 2024

Mohd Wakil Gulam Nabi Khan ... Appellant

Versus

State of Maharashtra and Anr. ... Respondents

Ms. Ilsa Shaikh for Appellant in APEAL/805/2024.

Mr. Bilal Motorwala for the Appellant in APEAL/813/2024 and APEAL/814/2024.

Ms. Priyanka H. Chavan for Appellant in APEAL/804/2024.

Mr. Nilesh Navale for Appellant in APEAL/806/2024.

Mr. Mithilesh S. Singh for Respondent No.2 in all Appeal.

Ms. Shilpa K. Gajare-Dhumal, APP for Respondent No.1-State in APEAL/813/2024, APEAL/814/2024 and APEAL/806/2024.

Ms. Anuja S. Gotad, APP for Respondent No.1-State in APEAL/805/2024.

Ms. Rashmi S. Tendulkar, APP for Respondent No.1-State in APEAL/804/2024.

CORAM : SANDEEP V. MARNE, J.

DATE : 2 DECEMBER 2024.

P.C. :

1) Leave granted to amend prayer clause in Appeal No. 806 of 2024. Amendment to be carried out forthwith.

2) These Appeals are filed by the Appellants challenging the Orders dated 6 July 2024 passed by the learned Additional Sessions Judge, Thane rejecting the application filed by the Appellants for grant of pre-arrest bail in connection with C. R. No. 832 of 2024 registered with Daighar Police Station for the offences punishable under Sections 141, 143, 147, 148, 447, 341, 323, 504 and 506 read with Section 34 of

the Indian Penal Code, 1860 and Sections 3(1) (f), 3(1)(g), 3(1)(p), 3(1)(r), 3(1)(s) and 3(1)(va) of the SC & ST Act.

3) I have heard Ms. Priyanka Chavan, the learned counsel appearing for the Appellant in Appeal No. 804 of 2024, Ms. Shaikh the learned counsel appearing for the Appellant in Appeal No. 805 of 2024, Mr. Motorwala the learned counsel appearing for the Appellant in Appeal Nos. 813 & 814 of 2024, Mr. Navale the learned counsel appearing for Appellant in Appeal No. 806 of 2024, Ms. Gajare-Dhumal the learned APP appearing for Respondent No.1-State in Appeal Nos. 806 of 2024, 813 & 814 of 2024, Ms. Gotad the learned APP appearing for Respondent No.1-State in Appeal No.805 of 2024, Ms. Tendulkar, the learned APP appearing for Respondent No.1-State in Appeal No. 804 of 2024 and Mr. Singh the learned counsel for Respondent No.2 in all Appeals.

4) Perusal of the FIR statement would *prima facie* indicate that the real grouse of the Complainant is with regard to construction of chawl like structures in her land admeasuring 50 Guntha at the instance of the Appellants and other persons. However, such construction as well as induction of third parties therein has apparently happened prior to 12 August 2021. It appears that the Appellant has already instituted appropriate proceedings before the Revenue Authorities for removal of encroachment and various orders are passed in those proceedings from time to time. The real trigger for lodging of the FIR is the incident that allegedly occurred in December 2023, when the Appellants apparently obstructed the Complainant from undertaking leveling work in her land and prevented her from

entering her land. However, even in respect of the alleged incident of December 2023 there is substantial delay in lodging of the FIR, which is lodged on 18 April 2024.

5) It appears that Accused No. 1 – Karimuddin Abdul Majid Chaudhary was arrested on 20 April 2024 and by separate order passed today, this Court has released him on regular bail. So far as the present Appellants are concerned they are granted interim protection by this Court by passing various orders. It appears that investigations *qua* Accused No.1-Karimuddin are already complete and the chargesheet has been filed. The learned counsel for the Appellants would submit that though the Appellants were always ready and willing to remain present before the Investigating Officer as directed by this Court, they were never summoned by the Investigating Officer for conduct of investigations. They would submit that the Appellants are willing to remain present before the Investigating Officer and co-operate with conduct of investigations.

6) The learned counsel appearing for Respondent No.2 would invite my attention to various photographs in support of his contention that there are several chawl like structures standing on the land in question, which are occupied by the third parties at the instance of the Appellants. He would further submit that additionally the container referred to in the FIR statement of Accused Sajid Ali Mohd Shaikh @ Raju Tempo and Wakil Ahmed Shaikh is still kept inside the land and has not been removed. Ms. Chavan, the learned counsel appearing for the said two Appellants, after taking instructions from her client would make a statement that the said Appellants shall not claim any right in

respect of the container in question and that they shall have no objection to container being dealt with (either occupied, used or sold) by the Complainant. The statement is recorded.

7) The learned counsel appearing for Appellants would submit that none of the Appellants claim any right in respect of the land of the Complainant and they shall not enter the said land for any purposes. This statement is also accepted. In my view, therefore, the interim protection granted in favour of the Appellants deserve to be made absolute since interest of the Complainant in respect of the land in question is sufficiently protected. So far as the allegations of abuse in the FIR are concerned, the statements of the husband of the complainant does not reflect any caste based accusations. So far as the statement of the complainant recorded under Section 164 of the Code is concerned, the same is vague in nature and does not refer to the date and venue where any caste based allegations are made by any of the Appellants.

8) I accordingly proceed to pass the following order:

i) Orders dated 6 July 2024 passed by the learned Additional Sessions Judge, Thane are set aside.

ii) Interim protection granted in favour of the Appellants vide Orders dated 5 August 2024 and 7 August 2024 is made absolute subject to the following conditions:

- a) Appellants shall remain present before the Investigating Officer on 16, 17 and 18 December 2024 between 11.00 a.m. to 2.00 p.m. and shall co-operate with conduct of investigations.
 - b) Appellants shall not enter upon the land of the Complainant nor shall claim any right therein.
 - c) The Appellants shall not contact the Complainant, any member of her family or any witnesses associated with the case nor shall tamper with the evidence.
 - d) Appellants shall attend each date of hearing before the Special Court, unless exempted from personal appearance.
- 9) It is made clear that, if there is violation of any of the conditions of anticipatory bail, the prosecution shall be at liberty to apply for cancellation of the protection granted in favour of the Appellants.
- 10) With the above directions, the Appeals are **allowed and disposed of.**

[SANDEEP V. MARNE, J.]