



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.769 OF 2023

1. Premsing Ramsing Jadhao
Aged about 35 years,
Occupation – Agriculturist,
2. Swapnil Navalsing Jadhao
Aged about 25 years,
Occupation – Agriculturist

Both No.1 and 2 R/o. Tandulwadi,
Tq. Khamgaon,
District Buldhana

...APPELLANTS

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Pimpalgaon Raja,
District Buldhana
2. Devrao s/o Namdev Shirsat
Aged about 50 years,
Occupation – Agriculturist

R/o. At-post Tandulwadi,
Pimpalgaon Raja,
Tq. Khamgaon,
District Buldhana

...RESPONDENTS

Mr. B.K. Suchak, Advocate for the appellants.
Mr. N.H. Joshi, APP for the State.
Mrs. S. Saware Gadhave, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JANUARY 29, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. By preferring this appeal, the appellants have challenged the order passed by the Special Court under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the Atrocities Act' for short) in Bail Application No.393 of 2023 by which the application for the anticipatory bail is rejected on 28/11/2023. The appellants are apprehending arrest at the hands of police as crime is registered on the basis of report lodged by the informant Devrao Namdeo Sirsat on an allegation that on 14th November 2023 at about 7.00 a.m. he had been to his agricultural field and he received the phone call of Sachin Suryawanshi who informed him that the co-accused Navalsing Ramsing Jadhao is abusing his wife Usha on account of hand loan amount. He immediately proceeded towards the house and he met the co-accused Navalsing Ramsing Jadhao at Gauri Hotel, Pimpalgaon Raja. Present appellants were also accompanied the co-accused Navalsing Ramsing Jadhao. At the said place there was exchange of words between them and present appellant No.1 Premsing Jadhao gave a blow of iron rod on his hand and appellant No.2 assaulted

him by means of handle of the spade, due to which he had sustained the injuries. On the basis of said report, police have registered the crime against the present appellants.

3. Learned Counsel for the appellants submitted that as far as the allegations are concerned, the custodial interrogation of the present appellants is not required. The recitals of the FIR nowhere shows that either present appellants have referred the caste of the informant and abused him on the caste, therefore, the provisions of the Atrocities Act are not applicable. In view of that anticipatory bail application is maintainable as bar under Section 18 or 18A is not attracted. He submitted that learned trial Court has not considered this aspect and erroneously rejected the application therefore, interference by this Court is required.

4. Learned Additional Public Prosecutor strongly opposed the appeal on the ground that there is a specific role attributed to the present appellant No.1. Due to the assault by appellant No.1 injured has sustained the fracture injury which is grievous in nature. The rod which is used by the present appellant No.1 is yet to be recovered, and therefore, custodial interrogation is required. In view of that, the appeal deserves to be dismissed. He further submitted that the order passed by the trial Court by observing that there is a *prima facie* role reveals from

the recitals of the FIR and custodial interrogation is required. No error is committed by the trial Court, in view of that the appeal deserves to be dismissed.

5. Learned Counsel for respondent No.2 endorsed the same contentions and submitted that considering the role attributed to the appellant No.1 the application for anticipatory bail rightly rejected by the trial Court, in view of that the appeal deserves to be dismissed.

6. Having heard learned Counsel for the parties. Perused the recitals of the FIR and the various statements. As far as the maintainability of the anticipatory bail application is concerned, admittedly there is no reference in the recitals of the FIR that either present appellants have abused the informant on his caste or referred his caste during the hot exchange of words. Thus, *prima facie* there are no recitals to attract the provisions of the Atrocities Act therefore, the application for anticipatory bail is maintainable. Now, considering the role attributed to the present appellants is concerned there is a specific allegation against appellant No.1 that he has assaulted by means of iron rod. The injury certificate which is placed on record shows the injured has sustained the fracture injury due to the blow given by appellant No.1. Thus, *prima facie* case is made out against appellant No.1, his custodial interrogation is also necessary to recover the said weapon. As far as appellant No.2 is concerned he has assaulted by means of handle

of the spade by which injury like contusion is caused to the informant which is simple injury. Considering the role attributed to the present appellants, the prayer of appellant No.1 for grant of anticipatory bail deserves to be rejected whereas considering the role of appellant No.2 his prayer for anticipatory bail can be considered.

7. Learned trial Court has rightly considered that due to the blow given by the iron rod by appellant No.1, the injured has sustained the grievous injury which is fracture of index finger which is grievous in nature whereas the trial Court erroneously held that appellant No.2 has also caused the grievous injury to the injured.

8. Considering the circumstances under which the alleged incident has taken place and the role attributed to appellant No.2 his prayer for grant of anticipatory bail deserves to be allowed whereas the prayer of appellant No.1 for grant of anticipatory bail deserves to be rejected. Hence, I proceed to pass following order :

- (i) The appeal is partly allowed.
- (ii) The order passed by the trial Court rejecting the anticipatory bail application of appellant No.2 is hereby quashed and set aside.
- (iii) The prayer of appellant No.1 for grant of anticipatory bail is hereby rejected.

(iv) In the event of arrest, appellant No.2 - Swapnil Navalsing Jadhao in connection with Crime No.331/2023 registered at police station Pimpalgaon Raja, Taluka Khamgaon, District Buldhana for the offence punishable under Sections 324, 325, 504 and 506 of the Indian Penal Code and Section 3(1)(r), 3(1)(s), 3(2)(v-a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(v) The appellant No.2 shall attend concerned Police Station as and when required for the investigation purpose.

(vi) The appellant No.2 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(vii) The appellant No.2 shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

9. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)