

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2131 OF 2015**[Bajirao s/o Narayan Deshmukh and anr. Vs The State of Maharashtra & ors.]**

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or
directions and
Registrar's orders

Court's or Judge's orders

Shri V.S.Undre, advocate for applicants
Smt. V.A.Shinde, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.**DATED : 21st April, 2015****PER COURT :-**

1] This is an application for anticipatory bail by the applicants since they apprehend their arrest in connection with Crime No. 187 of 2011, registered at Kaij police station, District Beed under Sections 143, 147, 149, 323 of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2] I have heard Shri V.S.Undre, learned counsel for the applicants.

3] The first information report is lodged by one Laxman Dashrath Bansode, who admittedly belongs to a caste which is a scheduled caste. The first information report shows that on 24.6.2011 there was some verbal altercation between him and his maternal uncle. On 25.6.2011 when he was sitting in his house, that time applicant no.2 came in his Indica car and it was parked in front of Samaj Mandir and he called the first informant. The first informant obliged call given by applicant no.1 and accordingly he went near Samaj Mandir. That time

applicant no.1 assaulted on his chest and near eye by means of stick. He was also assaulted by applicant no.2. That time the other villagers tried to intervene in the matter. At that time both the applicants abused the first informant in the name of his caste i.e. by using words "Mahara Lay Majlas" [Mahara you have become arrogant] and thereafter both the applicants ran away. At that time three other persons were also sitting in the Indica car. The first informant has stated in the first information report that he will be able to identify those three persons.

4] Pertinent to note here is, prior to approaching before this court under Section 438 of the Code of Criminal Procedure, the applicants have preferred a petition for quashing of the first information report. The said petition was registered as Criminal Application No. 2803 of 2011. The Hon'ble Division Bench of this court on 6.4.2015, after a detailed hearing, passed elaborate judgment by which the Division Bench has observed as under :-

"19) The decision of the Apex Court shows that wider meaning is given by the Apex Court to the ingredient than the meaning given by the learned Single Judge and the Division Bench of this Court in the cases cited supra. In short, the Apex Court has given the meaning of this place as :-

(1) the place is within public view when it can be seen by public, but not necessary that persons passing by that side saw or heard the incident and, also;

(2) the place which is not visible to public but in that case if the incident took place when some members of public were there (not merely relatives or friends) it turns into the place within public view.

20) In view of the afore said interpretation made by the Hon'ble Apex Court, wider meaning needs to be given to the last ingredient. It can be said that the Hon'ble Apex

Court has used liberal construction for giving meaning. This meaning is not leading to ambiguity.

21) The old provision of Section 3(1)(x) of the Act and the new provision of Section 3(1)(r) & (s) are already quoted. Difference between the two provisions shows that the previous provision of section 3(1)(x) is kept intact as section 3(1)(r) and the act of giving abuses is separated in section 3(1)(s) of the new provision. However, the ingredient (in any place within public view) is still there in the new provision for both these offences. It can be said that even if there was no separation of offence of abuses, the previous section was covering this offence also.”

5] The judgment of Division Bench of this court as referred supra is placed on record of this application.

In the said judgment it is observed that injury is sustained by the complainant. It is also observed that there are statements of eye witnesses to the effect that incident took place at the place described by the complainant.

6] It is to be noted that nothing is placed on record to show that the afore said judgment of the Division Bench of this court is challenged before the Hon'ble Apex Court.

7] From the first information report, it is clear that the present applicants have used abusive language in the name of caste in the public view in respect of first informant.

8] In that view of the matter, present application for anticipatory bail is not maintainable in view of the Bar under Section 18 of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act. Hence, application is dismissed.

(V.M.DESHPANDE, J.)

dbm/crap2131.15