

FARAD CONTINUATION SHEET NO.

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

CRIMINAL APPLICATION NO. 3099 OF 2015**[Jagannath Balkrushan Surwase (Surose) Vs The State of Maharashtra]**

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

Court's or Judge's orders

Shri N.V.Gaware, advocate for applicant
Smt. S.G.Chincholkar, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.**DATED : 3rd July, 2015****PER COURT :-**

1] This is an application for anticipatory, since he applicant is apprehending his arrest in connection with Crime No. 96 of 2015, registered at Sonai police station, District Ahmednagar, for the offences punishable under Sections 323, 504 of the Indian Penal Code, and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), 1989.

2] I have heard Shri N.V.Gaware, learned counsel for applicant and Smt. S.G.Chincholkar, learned Additional Public Prosecutor for respondent.

3] The first information report is filed by one Parighabai Barde. According to the first information report, on 25.5.2015 at 8.30 in the night when she was standing in front of her house, that time the present applicant came near to the house and asked as to why her husband and son are quarreling amongst them and why they are using abusive words. That time, it was replied by the first informant that it being their family affair, the applicant should not interfere in the same. On that, the present applicant has given two slaps

to Prakash, who is the son of Parighabai. The first information report further states that, that time when Namdeo, her husband tried to rescue Prakash, at that time it is alleged that the applicant has used abusive words in the name of his tribe. According to the first information report, that time Ashabai and Babasaheb were present there.

4] Learned Additional Public Prosecutor, from the investigation papers submits that Ashabai and Babasaheb belong to the same tribe and they are closely related to the first informant Parighabai.

In that view of the matter, learned counsel for the applicant heavily relies on the reported decision of this court, in the case of **Mahesh Sakharam Patole and others vs State of Maharashtra [2009(2) Bom.C.R.(Cri.) 867]**. In the said judgment, in paragraph 7, this court has observed as follows :-

“ A mere presence of the family members, including resident servant, in my opinion, is not sufficient to constitute an offence under section 3(1)(x) of the Act. Family members or resident-servant cannot be treated as members of public. Members of the public should either be present when the offence is committed and even if the incident was not visible, at least the utterances or remarks should be audible to the members of public to constitute an offence under the Act. For instance, if the complainant was insulted/intimidated in a closed cabin, and if the remarks were clearly audible outside the cabin and if they were heard by the public, that would also constitute an offence under section 3(1)(x) of the Act. Similarly, if no member of public was present when the accused uttered the abuses at a public place, it would not constitute an offence. Therefore, to constitute an offence under section 3(1)(x) of the Act, the incident should occur in the presence of the public or at least the utterances should be audible to the member/s of public. ”

In view of the dictum laid down by this court in the afore said reported case and looking to the fact that there is no version of any independent person, the applicant can be protected by exercising discretion in his favour.

ORDER

- (i) Application is allowed.
- (ii) In the event of his arrest, in connection with Crime No. 96 of 2015, registered at Sonai police station, District Ahmednagar, for the offences punishable under Sections 323, 504 of the Indian Penal Code, and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), 1989, applicant-Jagannath s/o Balkrushan Surwase (Surose) be released on anticipatory bail on he executing P.R. bond of Rs. 5,000/- with one solvent surety in the like amount.
- (iii) Application is disposed of.

(V.M.DESHPANDE, J.)

dbm/crap3099.15