

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3944 OF 2015

1. Baban s/o Tabaji Zaware,
Age: 55 years, Occ: Agri.,
R/o. Wankute, Tq. Parner,
Dist. Ahmednagar.
2. Babu @ Sandesh s/o Baban Zaware,
Age: 25 years, Occ: Agri.,
Both R/o. Wankute, Tq. Parner,
Dist. Ahmednagar. ...Applicants

versus

The State of Maharashtra,
through the Police Inspector,
Parner Police Station, Tq. Parner,
Dist. Ahmednagar. ...Respondent

WITH

CRIMINAL APPLICATION NO. 3942 OF 2015

Rahul s/o Baban Zaware,
Age: 30 years, Occ: Advocate,
R/o. Wankute, Tq. Parner,
Dist. Ahmednagar. ...Applicant

versus

The State of Maharashtra,
through the Police Inspector,
Parner Police Station, Tq. Parner,
Dist. Ahmednagar. ...Respondent

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Mr. Rahul R. Karpe, Advocate for applicants
Mrs. M.A. Deshpade, A.P.P. for respondent
Mr. A.M. Gholap, Advocate to assist A.P.P.

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CORAM : N.W. SAMBRE, J.

DATE : 3rd SEPTEMBER, 2015

ORAL ORDER :

The present applicants are claiming pre-arrest bail in the offence bearing Crime No. II-24 of 2015 registered on 06/07/2015, with Parner police station, District Ahmednagar, out of the incident occurred on 04/07/2015, for the offence punishable under Sections 297, 504, 506 of the Indian Penal Code read with Section 3(1)(x) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It is not in dispute that the offences punishable under the Indian Penal Code to which the applicants were booked under are bailable. Therefore, this Court is required to consider the claim of present applicants as to whether the applicants are entitled for grant of pre-arrest bail in offence punishable under the provisions of Atrocities Act in the light of bar under Section 18 of the said Act in the matter of grant of pre-arrest bail.

2. With the assistance of learned Counsel for the applicants, learned A.P.P., who was assisted by Mr. Gholap, learned Counsel for the complainant, I have perused the contents of F.I.R. and the accusations made against the present applicants. The complainant claimed that in public view, filthy language was used against them which was coupled with caste based accusations, in the back ground of non filing of false complaint against one Dr. Nitin Randhwan by the complainant.

3. The background of accusation, according to present applicants is that, at the behest of Dr. Nitin Randhwan, crime came to be registered against the present applicants bearing Crime No. I-300/2014 for the offence punishable under Sections 143, 147, 148, 149, 324, 325, 323, 504, 506 of Indian Penal Code which was bailable offence. According to the present applicants, in view of political rivalry with the said complainant Dr. Nitin, present complainant Gulab is set up by the said Dr. Nitin and as such, the accusations are made. Mr. Karpe, learned Counsel for the applicants would urge that perusal of the accusations would reflect that even no prudent man, particularly the applicants who are educated persons would behave in such manner while noticing death of small child of the applicants of which last rituals were to be performed. He would further urge that overall reading of accusations in the F.I.R., reflects that provisions of Section 3(1)(x) and (xi) of the Atrocities Act are not attracted in the above referred back ground.

4. Learned A.P.P., while inviting attention of this Court to the statements recorded during the investigation, would urge that the accusations in the F.I.R. are duly supported by the persons who were accompanied the complainant at the time of incident. She would further urge that once from plain reading of F.I.R. and statements, it

is established that there was caste based insulting utterances in public view, the applicants were rightly charged under the provisions of the Atrocities Act.

5. After considering the rival submissions and upon perusal of the investigation papers, it reflects that it is not in dispute that the present applicants are accused in Crime No. 300/2014 registered at the behest of Dr. Nitin, running hospital at Wankute I.e.place of incident. The accusation in the F.I.R. is that, the applicants have forced the complainant to lodge false complaint against the said Doctor, which the complainant has refused and as such, the applicants have stalled funeral rituals of small child Pari. It is further required to be noted that upon intervention of certain persons from the village, funeral was continued and completed. The perusal of the case diary and investigation papers reflect that the statement of the persons who were travelling in the jeep with complainant immediately before the crime were recorded. Admittedly, the persons whose statements were recorded, are closely related to the complainant Gulab i.e. wife, mother-in-law, brother etc.

6. It is required to be noted that the independent witnesses whose names are specifically reflected in the statement of these witnesses namely Arun-jeep owner, driver in whose vehicle they were

travelling or travelled were not recorded.

7. Be that as it may, it is required to be noted that perusal of the F.I.R. in the above referred back ground, if to be analyzed, whether *prima facie* the contents attracts the offence punishable under Section 3(1)(x) and (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Appropriate reading of accusation reflects that the accusation could be considered as filthy words used against the complainant and which are not coupled with caste, so as to use insulting utterance. As such, *prima facie*, in my opinion, the provisions of Atrocities Act are not attracted.

8. This Court may take judicial note of the fact that all the applicants are members of one and the same family, who are named accused in one single crime, which also speak about intention of complainant.

9. In view thereof, it will be appropriate, in my opinion, to order the release of the present applicants on bail in the event of arrest. Hence, I propose to pass the following order.

10. In the event of arrest, the applicants be released on bail, on furnishing P.R. bond of Rs.15,000/- (Rs. Fifteen thousand) by

each of the applicant with one surety in the like amount in connection with Crime No. II-24/2015 registered with Parner Police Station, Taluka Parner, District Ahmednagar for the offence punishable under Sections 297, 504, 506 of the Indian Penal Code and under Section 3(1)(x)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The applicants shall attend the concerned police station initially for four days between 10-00 a.m. to 11-00 a.m. and thereafter as and when called.

11. The applicants are put to the notice that they shall not tamper the evidence.

12. Both the Criminal Applications stand allowed in above terms.

[N.W. SAMBRE, J.]