

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

Criminal Application No. 5153 of 2016

District : Aurangabad

1. Jameel Ahemad s/o. Khaled Vasim
Ahemad,
Age : 34 years,
Occupation : Service as
Assistant Teacher,
R/o. Azam Colony,
Roshan Gate, Aurangabad.

2. Shaikh Ali s/o. Shaikh Maheboob,
Age : 49 years,
Occupation : Business,
R/o. Azam Colony,
Roshan Gate,
Aurangabad.

.. Applicants.

versus

1. The State of Maharashtra,
Through the Superintendent of
Police,
Aurangabad.

2. Police Inspector,
Begumpura Police Station,
Aurangabad.

.. Respondents.

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Mr. A.S. Golegaonkar, Advocate, for applicants.

*Mr. S.M. Ganachari, Addl. Public Prosecutor, for
respondent nos.1 and 2.*

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CORAM : A.M. BADAR, J.

DATE : 28TH SEPTEMBER 2016

ORAL ORDER:

Applicants / accused are apprehending their arrest in Crime No. 146/2016 registered with Police Station, Begumpura, Aurangabad, on 20.07.2016 for offences punishable under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 [**For short, "Atrocities Act"**] as well as under Sections 504, 506, read with Section 34 of the Indian Penal Code, at the instance of Kishor s/o. Baburao Mhaske. By this application, applicants / accused are seeking pre-arrest bail.

2. The learned Counsel for applicants by drawing my attention to the FIR has pointed that according to the prosecution case, the incident allegedly took place on 05.06.2016. The FIR of this incident was lodged on 20.07.2016. The learned Counsel argued that this delay of two months in lodging the FIR shows that applicants are falsely implicated.

3. By taking me through the text of the FIR, the learned Counsel for applicants argued that the FIR itself shows that plot of accused persons and plot of the informant are having different approach ways and different gut numbers. The learned Counsel argued that both these plots are not at all adjacent to each other. Therefore, according to the learned Counsel for applicants, there was no reason for

applicants to effect construction facing the plot of the informant. Therefore, according to the learned Counsel for applicants, the FIR is falsely lodged.

4. The learned Counsel for applicants further argued that the incident did not take place at public place and therefore, provisions of the Atrocities Act are not applicable. It is further argued that both applicants are residing at different places. The informant is not even knowing names of accused persons fully and therefore, how accused can know caste of the informant. With this, it is argued that applicants will abide each and every condition imposed by this Court and therefore their liberty needs to be protected. It is also pointed out that applicants are belonging to the Other Backward Class and for that purpose, reliance is placed on validity certificate annexed to the application.

5. The learned Addl. Public Prosecutor opposed the application by submitting that statement of the informant is recorded and the investigation is still going on.

6. The offence alleged is under Section 3(1)(x) of the Atrocities Act. Intentional insult or intimidation with an intent to humiliate member of a Scheduled Caste or Schedule Tribe in any place within public view is made punishable by this Section. At

this stage, it will be apposite to take note of Section 18 of the said Act. By Section 18, applicability of Section 438 of the Code of Criminal Procedure is excluded so far as offences punishable under the Atrocities Act are concerned. Thus, in other words, Section 18 of this Act prohibits invoking provision of Section 438 of the Cr.P.C. Therefore, let us see whether a prima facie case for the offence punishable under the Atrocities Act is made out by the informant.

7. The FIR of the crime in question is lodged by informant Kishor Mhaske. Papers of investigation shows that he belongs to 'Mahar' caste which is recognized as a Scheduled Caste under the Constitution (Scheduled Caste Order), 1950. It is alleged by informant Kishor Mhaske that there was dispute between him and accused persons as accused Jameel Ahemad had constructed structure facing his plot. According to the informant, on 05.06.2016 at about 14.30 hours, he as well as his relative by name B.G. Raut had been to Saida Colony at Jatwada Road, where they were to discuss the matter of construction effected by applicant Jameel Ahemad. Informant Kishor Mhaske reported that at that time, Jameel Ahemad and his relative named Ali were present. According to the informant, he asked Jameel Ahemad as to why he has erected the front door of his construction facing the plot of informant Kishor

Mhaske. Upon that, according to informant Kishor Mhaske, Jameel Ahemad and Ali became angry and started abusing him in obscene language. It is further reported that both rushed on person of the informant and abused him by uttering "ज्यारे धेडगे, महारो की क्या औकाद है, जयभीम के अंडे, कुत्ते की औलाद". The informant further reported that with these utterances, Jameel Ahemad and Ali threatened him and when the incident taking place, 8 - 10 persons gathered. The informant further reported that when he used to visit his plot, he used to exchange wishes by uttering "जयभीम" and therefore Jameel Ahemad and Ali were knowing that he belongs to the Scheduled Caste.

8. Perusal of utterances attributed to applicants by the informant makes it clear that those are falling within purview of Section 3(1)(x) of the Atrocities Act as such utterances amounts to insult or intimidation with necessary intention to the member of the Scheduled Caste. Bar of Section 18 of the Atrocities Act is therefore perfectly applicable to the case in hand. Requirement is such utterances in public view. FIR itself shows that about 8 - 10 persons gathered on the spot at the time of the incident.

9. At this juncture, it is apposite to quote observations of the Hon'ble Supreme Court in the case of **Vilas Pandurang Pawar Vs. State of Maharashtra &**

others [2012(4) Bom.C.R.(Cri.)408]. In paras 8 and 9 of this report, it is observed thus :-

"8. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the Court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.

9. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other

material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence. "

10. In this view of the matter, as prima facie case for the offence punishable under the Atrocities Act is made out, this Court cannot exercise its powers under Section 438 of the Code of Criminal Procedure.

11. The Application is accordingly rejected.

12. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

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