

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

CRIMINAL APPLICATION NO. 5436 OF 2016

Ajay s/o. Bhaskar Bhise .. Applicant
Age. 28 years, Occ. Agri.,
R/o. Pimpri-Zola, Tq. Gangakhed,
Dist. Parbhani.

Versus

The State of Maharashtra .. Respondent

Mr.J.M. Murkute, Advocate for the applicant.
Mr.S.J. Salgare, APP for respondent/State.

**CORAM : A.M. BADAR, J.
DATED : 06.10.2016**

P.C. :-

1. The applicant/accused in Crime No.356 of 2016 registered with Gangakhed Police Station, Dist. Parbhani for the offences punishable under sections 3(1)(r)(s) and 3 (v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, ("the Atrocities Act" for the sake of brevity) and sections 323, 324, 504, 506 read with 34 of the Indian Penal Code, at the

instance of Babasaheb Bapurao Kamble, by this application, is seeking pre-arrest bail.

2. Heard learned Counsel appearing for the applicant/accused. He argued that perusal of the F.I.R. does not show prima facie case for the offence punishable under the Atrocities Act. The family of informant is in the habit of lodging reports to implicate villagers in false cases under the Atrocities Act. It is argued that even such threats are extended to the villagers and the residents of the village had earlier lodged report in that regard. It is argued that wife of the informant is a member of Water Supply and Conservancy Committee of Grampanchayat, Pimpri (Zola) and the father of the applicant had lodged the complaint of corruption by the said committee. My attention is drawn to representation signed by several villagers addressed to the Collector with the averment that the informant is lodging false complaint under the Atrocities Act under political motivation.

3. Learned A.P.P. opposed the application by contending that the application cannot be entertained in view of bar under section 18 of the Atrocities Act. Learned A.P.P. argued that there are two witnesses, namely, Milind Kamble and Pandhari Kamble, who had stated

that the informant had disclosed incident of castist abuses and assault to them.

4. Perused the papers of investigation. Intentional insult of a member of Scheduled Caste in any place within public view and abuses to a member of Scheduled Caste by caste name in the place within public view constitutes an offence punishable under section 3 (1) (r) & 3 (1) (s) of the Atrocities Act. The commission of the offence specified in the schedule against a person or property, knowingly that such person belongs to a Scheduled Caste constitutes an offence punishable under section 3 (2) (v) (a) of the Atrocities Act. If prima facie case is made out for such offence, then section 18 of the Atrocities Act bars entertainment of application under section 438 of Cr.P.C.

5. Informant - Babasaheb Kamble, who claims to be a teacher by occupation, reported police on 27.08.2016 that on 26.08.2016 he was assaulted by present applicant. At that time according to the informant two more person were accompanying the applicant. It is alleged that the present applicant gave fist and kick blows to the informant apart from blows by stick. The informant averred that the applicant uttered that "*Mahara dhedgya tumhi khup majle aahat*" meaning thereby that person

belonging to Schedule Caste are insolent.

6. Exh. "E" (record page No.35) is a complaint lodged by father of present applicant alleging corruption in working of Water Supply & Conservancy Committee of the Grampanchayat. It is reported that wife of present informant is a member of the said Committee. Exh. "F" (record page No.37) is a representation addressed to the Collector, Parbhani, under signature of Surpanch of the Village Panchayat as well as signature of several villagers of Pimpri (Zola). This representation dated 02.09.2016 is to the effect that the informant is making false complaint under the Atrocities Act.

7. Exh. "D" (record page No.30) is F.I.R. lodged by Rameshwar Dattarao Bhise resulting in registration of Crime No.42 of 2013 against present informant. It is averred in that F.I.R. that the present informant had assaulted Rameshwar, his mother Gitabai had threatened Rameshwar that he will be involved in false case under the Atrocities Act.

8. On this factual background, record of investigation shows that the incident was witnessed by two independent witness. They are Sahebrao Gharjale and Ashok Bhosale. Sahebrao Gharjale appears to be natural

witness to the incident in question. The incident had happened in front of his pan tapari. Sahebrao Gharjale and Ashok Bhosle are, in-fact, supporting the informant so far as incident of assault on him by present applicant is concerned. However, both of them have categorically stated to the investigator that though there was assault on the informant by present applicant, the applicant had not given castist abuses nor he had insulted him with intention to humiliate the informant. In the wake of these two statements of independent witnesses, I am of the view that no prima facie case for the offence punishable under the Atrocities Act is made out by the informant. As such, bar of section 18 of the Atrocities Act is not applicable.

9. The assault was allegedly by means of fist and kick blows as well as stick blows. The record of the investigation shows that though the informant was treated at Government Hospital, Gangakhed, injury certificate is not made available to the investigator.

10. In this view of the matter, considering the nature of assault as well as circumstances in which the crime allegedly took place and that nothing fruitful will come out of custodial interrogation of the present applicant, he deserves to be granted anticipatory bail

Therefore, the following order :-

O R D E R

i. The application is allowed.

ii. In the event of his arrest in Crime No.356 of 2016 registered with Gangakhed Police Station, Dist. Parbhani for the offences punishable under sections 3(1)(r)(s) and 3 (v) (a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and sections 323, 324, 504, 506 read with 34 of the Indian Penal Code, applicant – Ajay s/o. Bhaskar Bhise be released on bail on executing P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand) and on furnishing surety in like amount.

iii. As a condition of this order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police to the Court.

iv. The applicant shall not tamper the

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evidence of the prosecution.

v. The applicant shall attend concerned police station on 19.10.2016 in between 11.00 a.m. to 01.00 p.m. and co-operate the investigation.

[A.M. BADAR, J.]