

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

CRIMINAL APPLICATION NO. 5558 OF 2015

1. Kundlik @ Pundlik S/o. Pandurang Malode,
Age : 60 years, Occu. Agril.,
R/o. Lamangaon, Tq. Khultabad,
Dist. Aurangabad.
2. Shivaji S/o Kundlik Malode,
Age : 32 years, Occu. Agril.,
R/o. As above.
3. Ankush S/o. Ramchandra Malode,
Age : 30 years, Occu. Agril.,
R/o. As above.
4. Parasram S/o. Suryabhan Malode,
Age : 42 years, occu. Agril.,
R/o. As above.
5. Dattu S/o. Dashrath Malode,
Age : 30 years, Occu. Agril.,
R/o. As above.
6. Navnath S/o. Vishwanath Bargal,
Age : 42 years, Occu. Agril.,
R/o. Khultabad, Tq. Khultabad,
Dist. Aurangabad.
7. Vipin S/o. Vishwanath Bargal,
Age : 44 years, Occu. Agril.,
R/o. As above.

... Applicants

VERSUS

The State of Maharashtra.

... Respondent

.....
Mr Rahate, Advocate h/f Mr Ladda, Advocate for the applicants
Mr S. M. Ganachari, APP for respondent/State
.....

CORAM : N. W. SAMBRE, J.

DATE : 15TH JANUARY, 2016.

PER COURT:

. At the very outset, the learned APP makes a statement that the investigation in the matter is already complete and the charge-sheet is also filed.

2. This Court by an *ad interim* order dt. 16th October, 2015 has already protected the present applicants in Crime No. I-161 of 2015 registered with Police Station, Khultabad, Tq. Khultabad, Dist. Aurangabad for the offences punishable under Sections 143, 147, 148, 323, 324, 506 of the Indian Penal Code and Sections 3(1), 7, 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short “the Atrocities Act”).

3. Shri. Rahate, learned counsel for the applicants, while trying to make out a case for pre-arrest bail, would strenuously urge that perusal of FIR would depicts that the offences came to be registered in the background of political enmity between the applicants and the complainant. He would then urge, that the custodial interrogation of the present applicants is no more required particularly when the

investigation in the matter is already complete and the charge-sheet is also filed. He would urge that, looking to the nature of allegations in the FIR, the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, do not attract in the present case.

4. Learned APP is heard, who is assisted by learned Counsel – Shri. Raut. Both the counsel would urge that, in view of the accusations in FIR against the present applicants about the caste-based accuses, bar u/s 18 of the Atrocities Act would be attracted and in view thereof, the present application for pre-arrest bail is liable to be rejected at the very threshold.

5. Mr Raut, learned Counsel for the complainant then would urge that, the complainant has suffered injuries as is depicted in the investigation papers and there being eye-witnesses to the incident, the detention of the applicants is necessary as there is *prima facie* case against them and, therefore, sought dismissal of the present application.

6. With the assistance of the learned Counsel, I have perused the investigation papers in the background of the contents of the FIR.

7. Admittedly, the contents in FIR depict that the caste-based abuses were not hurled by each of the applicants but the statement, if read as a whole from the FIR contemplates omnibus allegations on caste-basis. In my opinion, in view of law laid down by this Court in the matter of ***Shashikant Ramhari Tambe & Ors. Vs. State of Maharashtra*** reported in *2008(0) BCI 418*, the omnibus allegations would not attract bar u/s 18 of the Atrocities Act.

8. Apart from above, it is required to be taken note of the fact that, the incident narrated in the FIR depicts the political enmity between the applicants and the complainant and as such, the applicants' false implication in the crime in question cannot be ruled out.

9. As the investigation in the matter is already complete and the charge-sheet is also filed, I am unable to get the appropriate satisfactory answer from the counsel for the non-applicants as to why custodial interrogation of the applicants is necessary.

10. In view of above, *ad interim* protection already granted by this Court on 16th October, 2015 to the applicants herein, needs to be further confirmed and is accordingly confirmed. Hence, I proceed to

pass the following order.

ORDER

- (i) In the event of arrest of the applicants Kundlik @ Pundlik S/o. Pandurang Malode, Shivaji S/o Kundlik Malode, Ankush S/o. Ramchandra Malode, Parasram S/o. Suryabhan Malode, Dattu S/o. Dashrath Malode, Navnath S/o. Vishwanath Bargal and Vipin S/o. Vishwanath Bargal, in Crime No. I-161 of 2015 registered with Police Station, Khultabad, Tq. Khultabad, Dist. Aurangabad for the offences punishable under Sections 143, 147, 148, 323, 324, 506 of the Indian Penal Code and Sections 3(1), 7, 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they be released on bail, on each of them furnishing P.R. bond in the sum of Rs. 25,000/- with one surety in the like amount.
- (ii) The applicants shall attend the concerned Police Station on 21st and 22nd January, 2016 between 10.00 a.m. and 12.00 noon and thereafter as and when called by the Investigating Officer.
11. Criminal Application stands disposed of in above terms.

**[N. W. SAMBRE]
JUDGE**