

(1)

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

**CRIMINAL APPLICATION NO.6135 OF 2016**

1. Devidas s/o Pandit Patil,  
Age : 47 years, Occ. Agriculturist,
2. Hiranman s/o Rupla Patil,  
Age : 35 years, Occ. Agriculturist,
3. Bhausahab s/o Balwant Patil,  
Age : 35 years, Occ. Agriculturist,

All R/o Borkheda bk, Chalisgaon,  
Taluka Chalisgaon, District  
Jalgaon

..APPLICANTS

VERSUS

1. The State of Maharashtra
2. Sau. Shital Sagar Sonwane,  
Age : 19, Occ. Agriculture,  
r/o Borkheda bk, Chalisgaon,  
Dist. Jalgaon

..RESPONDENTS

Mr Naseem R. Shaikh, Advocate for applicants;  
Mr A.D. Namde, Addl. Public Prosecutor for respondent no.1;  
Mr R.D. Temak, Advocate to assist Addl. Public Prosecutor

**CORAM : A.S. CHANDURKAR, J.**

**DATE : 1<sup>st</sup> December, 2016**

**ORAL ORDER**

The applicants apprehend their arrest in C.R. No.82 of 2016, registered at Mehunbare police station, Dist. Jalgaon, for offences punishable under Section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Act of

(2)

1989”) and Sections 354-A, 451, 323 read with Section 34 of the Indian Penal Code.

2. As per first information report dated 14<sup>th</sup> October, 2016, the informant – Shital Sonwane stated that on the said day at 10.00 a.m. when she was alone at home, the applicant no.2 had come to her house and had enquired as to whether her husband had taken his lunch box. She replied in the negative, after which applicant no.2 took his mobile and made a call to one Bhushan Patil and told her to talk with him. The informant denied to do so, after which applicant no.2 went away. Thereafter said Bhushan Patil came to her house and caught her hand. As she shouted, he ran away. The informant narrated this incident to her husband and other family members. Hence, they went to enquire about the same with the applicant no.2. Near a Dargah they met applicant no.2 and while they were inquiring with him about the earlier incident, the other applicants also came there and assaulted them and also abused them by their caste. On that basis aforesaid report came to be lodged.

3. It is submitted by the learned Counsel for the applicants that the present report is a fall out of a dispute in which said Bhushan Patil had been assaulted by the husband of the informant and other family members. According to him, said Bhushan Patil had lodged F.I.R. No.85 of 2016 on 16<sup>th</sup> October, 2016 in relation to the said incident that occurred on 14<sup>th</sup> October, 2016. He submitted that the family of the informant was aggrieved as Bhushan Patil and present applicants were opposing the

(3)

activities of the sand mafia of which they were members. He submitted that applicant nos.1 and 2 were members of the Grampanchayat that had passed a resolution on 24<sup>th</sup> August, 2016 opposing the auction of a sand Ghat. It was then submitted that as per the first information report, all the three applicants had given the same abuses which was improbable. Same were not in public view and, therefore, offence under Section 3 (1) (xi) of the Act of 1989 was not made out. It was, therefore, submitted that in these facts the applicants were entitled for protection. In support of his submissions, the learned Counsel placed reliance upon judgment of learned Single Judge in **Mahesh Sakharam and ors. vs. State of Maharashtra, 2009 CRI.L.J. 3831** and judgment of Honourable Supreme Court in **Asmathunnisa vs. State of A.P., AIR 2011 SC 1905**.

4. The application was opposed by learned Addl. Public Prosecutor by relying upon the police papers. He submitted that the statements of the witnesses recorded indicated occurrence of aforesaid incident in which the applicants had abused the family members of the informant by their caste. He submitted that as per the report, the incident had taken place near a Dargah and there were witnesses to the said incident. He referred to the statements of Anil Patil, Shashikant Patil and Sanjay Patil who were independent witnesses and who had heard the abuses. It was then submitted that insofar as applicant no.1 is concerned, he had criminal antecedents and two offences bearing F.I.R. Nos.76 of 2014 and 39 of 2016 had been registered against him. It was, therefore, submitted that considering aforesaid facts, a *prima facie* case had been made out to

(4)

refuse protection to the applicants.

The learned Counsel for the informant supported aforesaid submissions and opposed the prayer for grant of protection. He submitted that the applicant no.1 had suppressed the fact as regards his criminal antecedents and this fact alone was sufficient to refuse protection to said applicant. In that regard, he placed reliance on the decision of the learned Single Judge in **Santosh Chavan vs. The State of Mah. & anr., 2014 ALL MR (Cri) 854.**

5. I have perused the first information report as well as the police papers. As per the first information report, the applicants are alleged to have assaulted the husband of the informant and also abused him in the name of his caste. This incident is said to have taken place in front of a Dargah. The statement of the husband of the informant – Sagar indicates that all the three applicants had abused him in the name of his caste and applicant nos.1 and 3 had also assaulted him. He has stated that three persons, namely, Anil Patil, Shashikant Patil and Sanjay Patil had witnessed the incident and had thereafter come to rescue him. The statements of these three persons named by the husband of the complainant have also been recorded and they corroborate his statement. Thus, *prima facie* there is material on record gathered by the Investigating Officer to *prima facie* indicate involvement of the applicants.

6. In Mahesh Sakharam and ors. (supra), learned Single Judge had

(5)

found that in the said case offence alleged was under provisions of Section 3 (1) (x) of the Act of 1989. The abuses in the name of caste however were given in front of other family members of the complainant. In that context, it was observed that family members or a resident – servant could not be treated to be members of public. In the present case, the incident is stated to have taken place near a Dargah and it has been witnessed by persons, who were not members of the family of the complainant.

Similarly, the observations in Asmathunnisa (supra) that the place in question must be in public view does not further the case of the applicants as in the present case the abuses have been stated to have been given in front of a Dargah in presence of members of public.

It is also to be noted that insofar as applicant no.1 is concerned, it is found that he has criminal antecedents and C.R. No.76 of 2014 under Sections 325, 323, 504, 506 read with Section 34 of the Indian Penal Code and C.R. No.39 of 2016 for offences punishable under Sections 143, 147 to 149, 504 and 427 of the Indian Penal Code have been recorded against him. In the present application seeking anticipatory bail it has been stated at ground (K) that the applicant had no criminal antecedents. As observed in Santosh Chavan (supra) if bail has been obtained by suppressing material facts, then such bail already granted is liable to be cancelled.

7. Considering aforesaid facts, as I find that there is *prima facie* material on record to implicate the present applicants and there being

(6)

statements of witnesses who have witnessed the giving of abuses, the bar under Section 18 of the Act of 1989 would operate. Though it is submitted on behalf of the applicants that all the three applicants could not have repeated the same abuses, at this *prima facie* stage when there are statements of three independent eye-witnesses corroborating the statement of the informant's husband, I do not find that the applicants deserve to be granted discretion. Moreover, applicant no.1 is found to have criminal antecedents.

8. In view of aforesaid, the application for grant of anticipatory bail stands dismissed. However, at the request of learned Counsel for the applicants, the interim order granted by this Court on 8<sup>th</sup> November, 2016 shall continue to operate for a period of two weeks from today and shall cease to operate automatically thereafter.

**(A.S. CHANDURKAR, J.)**

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