

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2669 OF 2017

- 1 Abasaheb s/o Ramnath Waghmare, ... **Applicants.**
Age 48 years, Occ. Service.
- 2 Madan s/o Ramnath Waghmare, Age
38 years, Occ. Agriculture.
- 3 Arun s/o Ramnath Waghmare, Age 47
years, Occ. Agriculture.
- 4 Balasaheb s/o Sheshrao Waghmare,
Age 38 years, Occ. Agriculture.

All R/o. Ramrai, Tq. Gangapur,
District Aurangabad.

V E R S U S

- 1 The State of Maharashtra, **Respondents.**
Through Asst. Police
Commissioner, Chhavni Division,
Aurangabad.
- 2 The Police Inspector, Police
Station Waluj, Tq. Gangapur,
Dist. Aurangabad.
- 3 Ramesh S/o. Punjaram Sonkamble,
Age 43 years, Occ. Agriuculture,
R/o. Ramrai Tq. Gangapur , Dist.
Aurangabad.

Mr. R.S.Deshmukh, Advocate for the Applicants
Mr. S.J. Salgare, A.P.P. for the respondents/State
Mr. S.B. Bhosale, Advocate for the respondent No. 3

CORAM : K.L. WADANE, J.
DATE : 22nd JUNE, 2017

ORDER :

1. Heard Mr. Deshmukh learned counsel for the applicants, Mr. S.J. Salgare, learned APP for the respondents No. 1 and 2/State and Mr. S.B. Bhosale, learned counsel for the respondent No. 3.

2. This is an application filed by the applicant in connection with Cr. No. 96/2017 registered with Waluj Police Station, District Aurangabad against the applicants for the offences punishable under section 324, 504 r.w. 34 of the Indian Penal Code and under section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

3. One Ramesh Sonkamble r/o. Ramrai Tq. Gangapur lodged a complaint with Waluj police station on 05.05.2017 alleging that, at about 2.30 p.m., he alongwith one Prakash Waghmare went near the bore-well, as they have been called by Gramsevak and Talathi. They were intending to prepare panchnama of bore-well. When they were preparing panchnama, at

that time applicant No. 1 stated the informant that he is not member of the Grampanchayat and his wife is a member of the Grampanchayat. So the informant called his wife on telephone. On arrival of his wife the present applicant No. 1 abused the informant on his cast by saying "Dhedpata". The applicant No. 2 assaulted the informant by brick. Thereupon, one Babasaheb Waghchaure taken him to the police station where he lodged the report.

4. During the course of arguments Mr. Deshmukh learned counsel for the applicants submits that, there was political rivalry between the complainant and the accused, as the cousin brother of the applicants No. 1 to 3 namely Sunil has contested election against Prakash Waghchaure. During the election brother Sunil took an objection in the nomination of Prakash and the objection was considered. In that election brother of the applicant No. 4 is got elected.

5. Mr. Deshmukh learned counsel for the applicants further submits that, the applicants were apprehending that, the informant may involve them in the offence under the Scheduled Casts & Scheduled

Tribes (Prevention of Atrocities) Act, and therefore due to such apprehension, the applicant No. 1 immediately approached to the concerned police station, on the same day, before filing of the first information report and submitted an application stating that, there was beating and abusing incident. However, due to the political reason, the informant is likely to involve the applicants in the case of atrocities.

6. Copy of the application is produced on record, from which it appears that, the applicants were having apprehension in their mind that, informant may register the offence against the applicants punishable under Scheduled Casts & Scheduled Tribes (Prevention of Atrocities) Act. There is reference in the FIR about the presence of Talathi and Gramsevak. On perusal of the statement of these two witnesses, it appears that, they have stated about the abuses given to the informant. But their statements are silent about the abuses given by the applicant No. 1 to the informant on his caste.

7. Learned APP has relied upon the observations

in case reported in 2012 DGLS (Supreme Court) 457,
Vilas Pandurang Pawar & Anr. Vs. State of Maharashtra &
Ors., in which it is observed :

"In view of the above discussion and in the light of the specific averments in the complaint made by the complainant-respondent No. 3 herein, we are of the view that Section 18 of the SC/ST Act is applicable to the case on hand and in view of the same, the petitioners are not entitled to anticipatory bail under section 438 of the Code. Accordingly, the special leave petition is dismissed. However, it is made clear that the present conclusion is confined only to the disposal of this petition and the trial Court is free to decide the case on merits."

On perusal of the same, it appears that, the complainant has made specific averments in the complaint about the abuses. Therefore, it was held that, there was bar under section 18 of the SC/ST Act.

8. The aforesaid observations are inapplicable to the facts of present case, simply because, the applicants well in advance intimated to the police officer that they are likely to involve in the case

under the provisions of SC/ST Act. Furthermore, the two independent witnesses/government officers, have not supported the case, when they were present at the spot of incident. Therefore, the averments about the abuses on caste are basically doubtful. Therefore, I am of the opinion that, no bar is applicable under section 18 of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act to the facts of present case. In view of the above, the applicants are entitled for bail. Hence, following order :

O R D E R.

- i) Application is allowed.
- ii) Ad-interim order passed by this Court on 12.06.2017 is hereby made absolute.

9 Criminal application is disposed of.

(K.L. WADANE, J.)

mkd/-