

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

**921 CRIMINAL APPLICATION NO. 5765 OF 2017
WITH APPLN/5827/2017**

RAJU S/O. KISHOR DANGE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Mr. S.K. Mathpati, Advocate for Applicants.
Mr. K.N. Lokhande, A.P.P. for Respondents.

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**CORAM : V.L. ACHLIYA, J.
DATED : 16th NOVEMBER, 2017.**

ORAL ORDER :-

1. The applicants apprehending arrest in connection with offences punishable u/s 143, 147, 148, 149, 323, 504, 506, 354-A & 427 of Indian Penal Code and Sections 3(1) (r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, referred as "the Atrocities Act") vide Crime No.0311/2017 registered at Ahmedpur Police Station, District Latur, moved this application seeking Anticipatory Bail.

2. Heard the learned counsel for the applicants and learned A.P.P. for the State. Perused the F.I.R. and other documents relied in support of the application as well as papers of investigation.

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3. In nutshell, it is the contention of learned counsel for applicants that the complaint dated 25.09.2017 lodged by the complainant at the instance of her employer Bhimsingh Thakur. It is contended that on 13.09.2017, Bhimsingh Thakur had lodged a complaint of similar in nature alleging therein that the applicants have uprooted and removed the cement poles embedded on the boundary of his agricultural land. When he questioned them for removing poles, the applicants abused him. He was also assaulted by means of knife as well as fist and kicks blows. On the basis of complaint lodged by Bhimsingh Thakur, the offences u/s 143, 147, 148, 149, 323, 504 of Indian Penal Code came to be registered vide Crime No.302/2017 with Police Station Ahmedpur, District Latur.

4. On 25.09.2017, the complaint of similar in nature was lodged by Lalita, the women employed as labourer by Bhimsingh Thakur. In the complaint lodged, besides the allegations of removing poles in the midnight at about 3.00 a.m., the complainant has also made allegations that the applicants have abused her and her husband in the name of their caste and also outraged her modesty. In the incident, the applicants assaulted her and her husband and threatened to kill to them. On the basis her complaint, the offence in question came to be registered against the applicants. It is contended that on the basis of such

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false complaint, it is likely that applicants may be arrested, humiliated and harassed. It is pointed out that, in the complaint lodged by the complainant, she has stated that the incident was witnessed by Shaikh Babulal and Nilubai Vikram Gutte who have reached the spot on hearing the shouts raised by the complainant and her husband. They intervened and pacified the accused from assaulting. It is contended that, both the said persons have informed the District Superintendent of Police in writing that neither they were present on the spot on 25.09.2017 at the alleged time of the incident nor seen the accused abusing the informant and her husband in the name of their caste.

5. It is further contended that there was a boundary dispute between applicants and Bhimsingh Thakur. The applicants had lodged complaint with the Tehsildar against Bhimsingh Thakur and two other alleging therein that by joining hands with the Talathi of the village, they have tampered the revenue record in respect of Survey No. 35, and on the basis of such manipulated record, now trying to take the possession of the land owned and possessed by the applicants, by erecting compound. On 12.09.2017, again the another complaint was made against Bhimsingh Thakur and two others. Similar complaints was made to District Collector, Latur on 13.09.2017. On 22.09.2017, the Tehsildar Ahmedpur directed the Deputy

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Superintendent of Land Record to measure the land bearing Survey No.35. The direction was also given to the Circle Officer as well as the Police Officer in-charge of the Police Station vide letter dated 22.09.2017 to take appropriate action pursuant to the complaint of the applicant Vishnupant Dange.

6. In the background of above quoted facts of the case, learned counsel submits that, the complaint dated 25.9.2017 is a false and frivolous complaint and lodged at the instance of Bhimsingh Thakur, who is trying to illegally grab the portion of the land owned by the applicants. In the facts and circumstances of the case, the learned counsel submits that in order to protect the applicants being harassed and humiliated on account of arrest, it is necessary to invoke the powers u/s 438 Code of Criminal Procedure to save them from arrest.

7. On the other hand, learned A.P.P. and counsel representing the respondent opposed the application. It is contended that the allegations made in the complaint are supported by statements of Shaikh Babulal and Nilobai Vikram Gutte. Their statements were recorded on 26.09.2017. In their statements, they have stated that they were present on the spot and in their presence applicants have abused the informant and her husband in the name of their caste. It is contended that very act to force these two witnesses to write a letter to the

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Superintendent of Police, itself amounts to an act of pressurising and tampering the prosecution witnesses. It is contended that said witnesses were forced to give such writing. It is contended that the incident dated 13.09.2009 and 25.09.2009 are altogether different incident. In the incident dated 13.09.2017, some of the cement poles were uprooted and damaged. Whereas, in the incident dated 25.09.2017, out of 184 poles 174 poles were removed in the midnight at 3.00 a.m. It is further contended that the complainant who belongs to Scheduled Caste was abused in the name of her caste and her modesty was also outraged during the course of incident. In the background of overall facts of the case, the learned counsel submits that there is bar operates u/s 18 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to entertain the application. He submits that the complaint discloses prima facie case to connect the applicants with the commission of offence registered against them.

8. On due consideration of the submissions advanced in the light of overall allegations against the applicants and further perused the documents, relied in support of contentions raised by the applicants, I am of the view, the case is made out to entertain the application and grant anticipatory bail to applicants.

9. The incident is claimed to be occurred in the midnight

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at about 3.00 a.m. Although, it is claimed that the incident was witnessed by two persons who reached on the spot after hearing the shouts, those two persons have communicated in writing to the Collector that they were not present on the spot and their names have been falsely mentioned in the F.I.R as persons present on the spot. It is pertinent to note that the complaint of similar nature was lodged on 13.09.2013 against the applicants alleging therein they had uprooted and damaged certain poles embedded on the disputed area. Perusal of the correspondence between 11.09.2017 to 22.09.2017, as referred above spells out that there was a dispute on account of the land. The applicants had made complaint on 11.09.2017 with the Tehsildar Ahmedpur. Taking cognizance of the complaint the Tehsildar has caused enquiry into the allegations made by the applicants. The direction was given to the Deputy Superintendent of Land Record to get measured the land to avoid the dispute. It appears that there were cases and counter cases amongst the applicants and Bhimsingh Thakur. The land dispute amongst them leads to repeated registration of offences. In this background, the possibility cannot be ruled out that applicants may have been falsely implicated in the case, at the behest of Bhimsingh Thakur through the informant, who was working in his employment. Perusal of report of medical examination of informant and her husband raises certain doubts as to the facts alleged in the

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complaint that the informant and her husband were severely beaten and assaulted by stick in the incident dated 25.09.2017. The injuries of simple in nature were found on their persons. The husband is found to have sustained only one injury that too in the nature of contusion on the back. Informant found to have sustained two injuries in the nature of contusion over the left and right knee. Both the injuries are shown as simple in nature.

10. Thus considering the overall facts of the case, I am of the view that the case is made out to grant anticipatory bail to applicants. Grant of anticipatory bail will not affect ongoing investigation. Custodial interrogation of the applicants is not necessary for the investigation of the case. The incident was occurred at about 3.00 a.m. in midnight in the agricultural field. It is, therefore, difficult to believe that the incident was occurred in public view. Similarly, the incident was occurred all of sudden, on account of boundry dispute. It is therefore difficult to accept that the applicants acted intentionally in abusing the informant in the name of her caste. Thus, in absence of prima facie case to attract the offence under Prevention of Atrocities Act, no bar operate u/s 18 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989 to entertain the application. I am, therefore, inclined to allow the application.

11. It is clarified that the observations made as above are made for the limited purpose of deciding the present application and same shall not be treated as the observations made as to merit of the case of prosecution against the applicants.

15. Hence, the following order is passed:

:ORDER:

1. The application is allowed.

2. In the event of arrest of the applicants in connection offence u/s 143, 147, 148, 149, 323, 504, 506, 354-A & 427 of Indian Penal Code and Sections 3(1) (R) (S) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 vide Crime No.0311/2017 registered at Ahmedpur Police Station, District Latur, they be released on their furnishing in the sum of Rs. 25000/- with one surety in the like amount, on following conditions:

(a) The applicants shall appear before the Investigating Officer on 21.11.2017 at 11 a.m. and thereafter, continue to appear as and when directed by the Investigating Officer and cooperate with the investigation.

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(b) The applicants shall regularly attend the concerned Police Station on every Sunday in between 10.00 a.m. to 11.00 a.m. to record their appearance before the Investigating Officer, till filing of the charge-sheet.

(c) The applicants shall not contact the complainant and indulge into any act amounting to tampering with the prosecution witnesses.

(d) The applicants shall not cause any threat to the informant and her husband and other witnesses.

3. In the event of breach of any of the conditions of bail, the bail granted to the applicants liable to be cancelled.

(V.L. ACHLIYA, J.)