

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1329 OF 2018**

- |   |                                                                                                                               |                        |
|---|-------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 1 | Kalidas @ Amol Baban Babar<br>Age – 28 years, Occu. - Agri.,                                                                  |                        |
| 2 | Sangita Baban Babar<br>Age – 55 yaers, Occu. - Household,<br>Both R/At Post PimpliLimtk<br>Tal.-Baramati, Dist.-Pune.         | .... <b>Appellants</b> |
|   | Versus                                                                                                                        |                        |
| 1 | The State of Maharashtra<br>(Through Baramati City Police<br>Station, Tal.-Baramati<br>Vide C.R.No.561/2018)                  |                        |
| 2 | Vaishali Dattatraya Bhosale,<br>Age – 30 years, Occu. - Labourer,<br>R/at-Indiranagar, Pimpili,<br>Tal.-Baramati, Dist.-Pune. | ... <b>Respondents</b> |

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Mr.Rupesh A. Zade, Advocate for the Appellants.

Mr.A.R.Kapadnis, APP for the Respondent No.1/State.

Ms.Shraadha Sawant, Appointed Advocate for the Respondent No.2.

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**CORAM : A.M.BADAR J.**

**DATED : 9<sup>th</sup> OCTOBER 2019.**

**ORAL JUDGMENT :**

- 1                      Heard.

2 Admit.

3 Heard finally considering the fact that this is an appeal  
challenging the Order rejecting the application for anticipatory  
bail passed by the learned Special Judge and Additional Sessions  
Judge, Baramati on 25/10/2018 vide Order below Exhibit 1 of  
Criminal Bail Application No.745 of 2018.

4 Appellants are accused in Crime No.561 of 2018  
registered with Police Station Baramati City at the instance of  
respondent No.2 Vaishali Bhosale for the offences punishable  
under Section 3 of the Scheduled Castes and Scheduled Tribes  
(Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the  
Atrocities Act' for the sake of brevity) as well as under Sections  
323, 504 and 506 of the Indian Penal Code.

5 Heard the learned Counsel appearing for the  
appellants/accused. He argued that considering the FIR, it cannot  
be said that the incident in question was witnessed by any  
independent public witness so as to attract bar of Section 18 or  
18A of the Atrocities Act.

6 The learned Additional Public Prosecutor as well as the  
learned Counsel appearing for the respondent No.2 opposed the

appeal by contending that the incident took place at the public place and averments in the FIR to the effect that the First Informant had been to the house of the accused persons cannot be construed to mean that they entered inside the house of the First Informant/respondent No.2. Therefore, in their submission, the claim of appellants/accused anticipatory bail cannot be validly maintained.

7 I have carefully considered the submissions so advanced and also perused the material placed on record.

8 Though no specific Sub-sections of Section 3 are pointed out in the FIR by the prosecuting agency, perusal of the FIR goes to show that the prosecution wants to invoke provisions of Section 3(1)(r) and (s) of the Atrocities Act in the instant case. Intentional insult or intimidation with an intent to humiliate a member of the scheduled caste in any place within public view amounts to the offence of atrocities. Similarly, giving abuses to any member of the scheduled caste by caste name in any place within public view also amounts to the offence of atrocities.

9 This Court in the matter of ***Pradnya Pradeep Kenkare & Ors. Versus State of Maharashtra***<sup>1</sup> has interpreted the term ‘in any place within public view’. It is held in this Judgment that the offence of atrocities, as envisaged by Section 3(1)(r) and (s) is

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1 2005(3) Mh.L.J. 368

*prima facie* reflected only when it is witnessed by some independent public witness.

10 If the FIR is perused in the context of observations of this Court in the matter of ***Pradnya Pradeep Kenkare (supra)***, then it becomes clear that no independent public witness had witnessed the alleged intentional insult or intimidation for the purpose of humiliation so also the abuses alleged to be given by the appellants/accused to the First Informant/respondent No.2. In this view of the matter, it cannot be said that bar of Section 18 or 18A of the Atrocities Act is applicable to the case in hand. So far as other offences under the Indian Penal Code are concerned, custodial interrogation of the appellants/accused is not warranted. The learned Special Judge <sup>2</sup>has failed to appreciate the facts of the instant case in the light of law laid down by this Court in the matter of ***Pradnya Pradeep Kenkare (supra)***. Therefore, the same cannot be sustained. As such, the Order :

#### ORDER

- (i) The Appeal is allowed.
  
- (ii) The impugned Order dated 25/10/2018 passed by the learned Special Judge and Additional Sessions Judge, Baramati rejecting Criminal Bail Application No.745 of 2018 moved by the appellants/accused is quashed and set aside.

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2 2005(3) Mh.L.J. 368

- (iii) The application for anticipatory bail moved by the appellants/accused in subject crime is allowed.
- (iv) In the event of their arrest in Crime No.561 of 2018 registered with Police Station, Baramati City, at the instance of respondent No.2 Vaishali Bhosale, the appellants/accused be released on bail on their executing PR.Bond in the sum of Rs.15,000/- each and on furnishing surety in the like amount by each of them.
- (v) The appellants/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him from disclosing such facts to the Court or to any police officer.
- (vi) The appellants/accused shall co-operate with Investigating Officer in the investigation of the crime.
- (vii) The Appeal is disposed of accordingly.

**(A.M.BADAR, J.)**