

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPEAL NO.804/2018**

Sk. Akbar Sk. Bismillah & Others. .vs. State of Maharashtra through PSO P.S.  
Balapur, Akola and anr.

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's Orders.

Court's or Judge's orders.

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Mr. A. M. Tirukh, Advocate for appellant.  
Mr. N. S. Rao, A.P.P. for respondent no.1-State.

**CORAM : V.M. DESHPANDE, J.**  
**DATED : JANUARY 17, 2019**

1. Heard Mr. Tirukh, learned counsel for the appellant and Mr. Rao, learned A.P.P. for the respondent no.1-State.

2. Though, office note shows that notice to respondent no.2 sent through Superintendent of Police, Akola is awaited, Mr. Rao, learned A.P.P. submitted before this Court, on instructions, that notice intimating filing of the present appeal is given to responder no.2-original complainant and she signed the acknowledgment on 10.01.2019.

Statement is accepted.

3. Thus, respondent no.2 is duly served, however, nobody is appearing on behalf of respondent no.2.

4. The present appeal questions correctness of the order passed by learned Special Judge, Akola dated 01.12.2018 in Misc Criminal Application No. 805/2018, whereby the learned Judge of the Court below rejected the application filed under Section 438 of the Code of Criminal Procedure for anticipatory bail.

5. Respondent no.2 filed report with Police Station, Balapur, District Akola on 05.11.2018. On the basis of the typed report, the offence is registered against present appellants vide Crime No. 493/2018 for the offence punishable under Section 294, 506 of the Indian Penal Code under Section 3 (1) (r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

6. In the oral report, it is stated that the appellants belong to Muslim community and respondent no.2 belongs to Bouddha community. She was married in the year 2007 with one Dilip Uparvat and from him she delivered a child who is aged 10 years. After her marriage with Dilip, she got entangled with father of applicant nos.1 and 2 and husband of appellant no.3. It is stated in the FIR that thereafter she kept physical relations with Shaikh Bismilla, father appellant nos. 1 and 2 and husband of appellant no. 3. From the physical relations, she

delivered one child, who is now aged about 5 years. Appellants were annoyed as respondent no.2 was keeping relations with Shaikh Bismilla. According to the FIR, as she was intending to marry Shaikh Bismilla she continued her relations with him and due to this, her husband left her. It is stated in the FIR that on 26.09.2018, appellant nos.1, 2 and 3 assaulted on Shaikh Bismilla as he was keeping relations with respondent no.2. It is further stated that on 02.11.2018, Shaikh Bismilla came to the house of respondent no.2. At that time, he was very sad and he disclosed that the appellants are likely to finish him. Thereafter, he left her house. According to the FIR, on 03.11.2018, the appellants came to the house of respondent no.2 and used abusive language in the name of her caste and therefore she lodged the report.

Section 3 (1) (r) of the Act reads as under:

*“3. Punishment for offences of atrocities – (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -*

*(a) to (q) .....*

*(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”*

7. Thus, it is clear that the alleged incident of using abusive language in the name of caste took place inside the house and within four walls. Further, the FIR does not show that the incident occurred

within public view. The FIR is also silent that the abusive words used by appellants were heard by any member of the public.

8. By order dated 20.12.2018, interim protection was granted to the appellants. At that time, they were directed to attend Police Station on dates specified in the said order. Today, it is not the submission of learned A.P.P. that appellants failed to attend the Police Station.

9. In that view of the matter, I am of the view that the appellants have made out a case. Hence, I pass the following order.

**ORDER**

- (i) The appeal is allowed.
- (ii) order dated 01.12.2018 passed by learned Special Judge, Akola in Misc. Criminal Application No. 805/2018 is hereby quashed and set aside.
- (iii) In the event of arrest in connection with Crime No.493/2018, registered with Police Station, Balapur for an offence punishable under Sections 294, 506 of the Indian Penal Code and Section 3 (1) (r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants shall be released on bail on they executing P.R. Bond in the sum of Rs.5,000/- each with one solvent surety each in the like amount.

(iv) Appellant nos. 1, 2 and 4 are directed to attend Police Station, Balapur as and when directed by the investigating officer. However, for that, investigating officer shall give a clear cut 48 hours advance intimation to them.

(v) The appellants are directed not to intimidate or pressurise the respondent no.2.

The appeal is disposed of accordingly.

**Criminal Application No. 1252/2018**

In view of disposal of appeal, the present application is also disposed of.

**JUDGE**

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