

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

CRIMINAL APPEAL NO. 556 OF 2020

1] Nilesh s/o Yuvraj Patait
2] Deepak S/o Balu Kadam

...Appellants

Versus

The State of Maharashtra & Anr

...Respondents

.....
Shri. A. J. Mete, Advocate for the appellants
Shri. R. B. Bagul, APP for respondent/State
.....

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

DATE : Friday, the 23rd OCTOBER, 2020

PER COURT : -

1. The appellants before us are original accused nos. 2 and 3, respectively in Crime No. 0346/2020, registered on 02.09.2020. These two appellants, along with six others, have been charged with having committed offences punishable u/s 326, 324, 323, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the 1989 Act”).

2. We have heard the learned Advocate for the appellants and the learned APP. With their assistance, we have gone through the record available.

3. Accused no. 3 - Nilesh Vasant Jadhav, accused No. 5 - Ms Deepali Vasant Jadhav, accused no. 6 - Monali Vasant Jadhav, accused no. 7 - Ms Sonali Vasant Jadhav and accused no. 8 - Sanjivani Vasant Jadhav, have been granted anticipatory bail vide order dated 25.09.2020 passed by the trial Court. Contention of the appellants is, that they should be treated at par with these accused who have been granted anticipatory bail and should also be set at liberty.

4. We find from the First Information Report that there are specific allegations against accused no. 4 - Nilesh Yuvraj Patait (appellant no. 1 herein) and accused no. 2 - Deepak Balu Kadam (appellant no. 2 herein). The FIR reveals that these two persons, along with the lady members of the family (who have been granted anticipatory bail), had abused the complainant and some of his family members on a public road. The complainant and his family members belong to the Mahar, Scheduled Caste category. All the accused belong to the Maratha caste, which does not fall within the backward

class or tribe so as to be placed at par with the complainant, under the 1989 Act. Allegations of stealing goats were made by the accused and there was constant distasteful utterance of the caste to which the complainant belongs. The complainant and his family members were abused.

5. In all, there were four instances of such verbal caste abuse on 02.09.2020 at 07:00 am, at 07:30 am, at 08:30 am and then at 09:30 am, when Nilesh Yuvraj Patait along with appellant no. 2 herein and some of the family members had abused the injured victim Prashant Balu Kale. Appellant No. 1 had used a wooden log to strike at the left hand wrist of the complainant, which was fractured. Appellant No. 2 also carried a wooden log with which he struck the complainant on his legs and started beating him. When the mother of the complainant and paternal aunt tried to intervene, the lady family members (some of the accused) had assaulted them by slapping and kicking them.

6. The learned APP informs us that these two appellants have not been interrogated despite the FIR having been registered on 02.09.2020. Both these appellants have been untraceable and they are yet to be interrogated. It is, therefore, submitted that if these

appellants are absconding and not cooperating with the process of law, no sympathy deserves to be shown for such appellants.

7. On 24.09.2020, before the trial Court, the learned Advocate for these two appellants had made a statement that they were already arrested and the application for anticipatory bail No. 398 of 2020 was not pressed. Thereafter, these two applicants preferred an application for anticipatory bail No. 444 of 2020 in which the trial Court vide order dated 08.10.2020, had directed both these applicants to surrender before the police.

8. We find from the impugned order dated 08.10.2020 that the trial Court has considered the role played by these two appellants. A statement was made before the trial Court that appellant nos. 1 - Nilesh Yuvraj Patait and 2 - Deepak Balu Kadam herein and Vasant Shriram Jadhav have been arrested by the police. The learned Advocate for these appellants informs us today that these two appellants have not been arrested by the police and an incorrect statement was made before the trial Court.

9. In view of the above, considering the contents of the FIR and the charge of physically assaulting two persons and abusing them

with foul language and attributions towards their caste, we do not find that this is a fit case for considering the request of the appellants for anticipatory bail.

10. As such, this appeal is dismissed.

[B. U. DEBADWAR]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE