

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.236 OF 2020

1. PRADIP ABASO HUNDEKARI

Age: 19 years : Occ: Agriculture.

2. PRASHANT ABASO HUNDEKARI

Age 24 yaers, Occ:Agriculture
r/a Gadegaon, Taluka-Pandharpur,
District- Solapur.

... APPELLANTS.

VERSUS

1.THE STATE OF MAHARASHTRA

Through Pandharpur Gramin
Police Station.

2. VILAS RAMCHANDRA KAMBLE

Age :major, Occ:agriculture
r/a Gadegaon, Taluka-Pandharpur,
District-Solapur

... RESPONDENTS.

WITH

CRIMINAL APPEAL NO.237 OF 2020

MANAGL AABASO HUNDEKARI

Age 50 yrs, Occ:Agriculture &
housewife,
r/a Gadegaon, Tal: Pandharpur
District-Solapur.

... APPELLANT.

Versus

1.THE STATE OF MAHARASHTRA
Through Pandharpur Gramin
Police Station.

2. VILAS RAMCHANDRA KAMBLE
Age :major, Occ:agriculture
r/a Gadegaon, Taluka-Pandharpur,
District-Solapur

... RESPONDENTS.

WITH

CRIMINAL APPEAL NO.240 OF 2020

ABASAHEB SHRIMANT HUNDEKARI
Age 55 yrs, Occ:Agriculture
r/a Gadegaon, Tal: Pandharpur
District-Solapur.

.... APPELLANT.

Versus

1.THE STATE OF MAHARASHTRA
Through Pandharpur Gramin
Police Station.

2. VILAS RAMCHANDRA KAMBLE.
Age :major, Occ:agriculture
r/a Gadegaon, Taluka-Pandharpur,
District-Solapur

... RESPONDENTS.

Mr.Tushar N. Sonawane, Advocate for the Appellants.

Miss Rati Sinhasane, Advocate i/b Advocate U.R. Mankapure,
for respondent no.2.

Mr.S.V.Gavand, Additional Public Prosecutor for the State in
Criminal Appeal No.236 of 2020 and Criminal Appeal
No.240/2020.

Mr.A.R.Kapadnis, Additional Public Prosecutor in Criminal
Appeal No.237 of 2020.

CORAM : A. M. BADAR, J.

DATE : 12TH MARCH 2020.

ORAL JUDGMENT:

1. Leave for correcting the name of the appellant in
Criminal Appeal No.236 of 2020, as prayed by the learned
counsel for the appellant is granted.

2. All these appeals are arising out of Crime No.414
of 2019 registered with Pandharpur Rural Police Station for
offences punishable under Section 323, 504, 506 r/w 34 of

the Indian Penal Code and under Section 3(1)(r)(s) as well as u/s 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter to be referred to as S.C. and S.T. (Prevention of Atrocities Act) for the sake of brevity).

3. Application for pre-arrest bail made by the appellants/accused in Criminal Appeal No.236 of 2020 came to be rejected by the learned Special Judge vide Order dated 28.01.2020 in Criminal Miscellaneous Application No.1472/2019. Application for pre-arrest bail moved by the appellants/accused in Criminal Appeal No.237 of 2020 came to be rejected vide Order dated 28.1.2020 passed on Criminal Miscellaneous Application No.1471/2019 by the learned Special Judge, Pandharpur. Application for pre-arrest bail made by the appellants/accused in Criminal Appeal No.240/2020 came to be rejected on 28.1.2020 by the learned Special Judge, Pandharpur by passing order on Miscellaneous Application no.1470/2019. These 3 orders rejecting

applications for pre-arrest bail of the appellants are subject matter of challenge in these appeals, at the instance of the accused persons in Crime No.414 of 2019 registered with Pandharpur Rural Police Station, at the instance of respondent no.2 Vilas Kamble.

4. Heard. Admit. Heard finally by consent of parties.

5. Learned counsel for the appellants placed reliance on the Judgment of Division Bench of this Court in **Criminal Application (APL) No.1179 of 2018, in the matter of Sheikh Shama Sheikh Iqbal and Another Versus The state of Maharashtra and Another** decided on 26.2.2019 at Nagpur, **2019 ALL MR (Cri) 4301**. He also placed reliance on the Judgment of learned Single Judge of this Court in **Criminal Appeal No.75 of 2020 in the matter of Santosh Damu Bhagat and Another Versus The State of Maharashtra and Another**, decided on 28th February 2020. By placing reliance on these

two judgments it is argued by the learned counsel appearing in the appeals that neither First Information Report nor the papers of investigation shows that there is an averment by the prosecution that the appellants/accused persons belongs to a caste, community or a tribe which is not scheduled Caste or Scheduled Tribe. It is further argued that, the incident in question did not take place at any place within public view. It allegedly took place in agricultural field. Therefore, in submissions of the learned counsel for the appellants, bar of Section 18 or 18-A of S.C. and S.T. (Prevention of Atrocities Act) is not applicable to the case in hand. Reliance is also placed on the Judgment of **Hon'ble Supreme Court in Writ Petition no.1015/2018 in the case of Prathvi Raj Chauhan Versus Union of India and others, 2020(1) Madras L.J.(Cri), 378** decided on 10.2.2020 to demonstrate that if prima facie case for offences punishable under S.C. and S.T. (Prevention of Atrocities Act) is not made out then, bar created by Section 18 as well as 18-A of the S.C. and S.T. (Prevention of

Atrocities Act) shall not apply.

6. As against this, learned Additional Public Prosecutor argued that when first informant/respondent no.2 was undertaking agricultural operations in his field, appellants/accused persons assaulted them and obstructed them from undertaking sowing operations. According to the learned Additional Public Prosecutor, appellant Aabasaheb Shrimant Hundekari (in Appeal No.240/2020) gave casteist abuses to respondent no.2/first informant and instigated others to assault him. According to the learned Additional Public Prosecutor Kailash Kamble and Ganesh Shinde are independent public witnesses who had witnessed casteist abuses given by appellant Aabasaheb Hundekari.

7. I have also heard the learned counsel appearing for respondent no.2/first informant. She re-iterated submissions advanced by the learned Additional Public Prosecutor.

8. I have considered the submissions so advanced and also perused the papers of investigation made available by the learned Additional Public Prosecutor. Way back in the year 2008, in the matter of **Gorige Pentaiah Vs. State of Andhra Pradesh (2008)12 SCC 531** following were the observations made by the Hon'ble Supreme Court.

6. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent no.3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent no.3 in a place within public view. When the basic ingredients of the offence are missing in the complaint,

then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.

9. It is, thus, clear from these observations that, the First Information Report must contain averment that accused persons were not members of the Scheduled Caste or Scheduled Tribe. **The Division Bench of this Court at Nagpur in Criminal Application No.1179/2018, Sheikh Shama Sheikh Iqbal (supra) has held in paragraph 7 of his judgment as under;**

7. It is also the law that when an offence is alleged to be committed under any of the provisions of the Atrocities Act, 1989, the basic requirements of such an offence alleged in the complaint must be fulfilled first before other ingredients are seen to be satisfied. These basic requirements are twofold. The first

requirement is to the effect that there is an assertion by the complainant that he or she belongs to caste or tribe which is scheduled caste or scheduled tribe. The second requirement is to the effect that the accused belongs to a caste or community or tribe which is not a scheduled caste or scheduled tribe or scheduled community. If these basic requirements are fulfilled, the Investigating Officer is also required to satisfy himself that the allegations made in the complaint prima facie constitute an offence requiring registration of a crime and investigation into the crime so registered. Unless these basic requirements coupled with other necessities of offence are satisfied, we must say, no Investigating officer would get an authority to register the F.I.R. and make investigation into such an offence. This is the law settled by the Hon'ble Apex Court in the case of Manoj alias Bhau and others versus State of

Maharashtra, reported in (1994)4 SCC 268, which has been followed by the learned Single Judge of this Court in the case of Bai @ Laxmibai w/of Nivratti Poul and others Versus State of Maharashtra, reported in 2001(1) B.Cr.C. 321.

10. This court in the said matter has held that when such parameters were absent at the initial stage itself offence under Atrocities Act ought not to have been registered and no investigation should have been made. The Division Bench of this Court then proceeded to quash Crime No.347 of 2018 for offences punishable under Section 3(1)(w)(i) and (ii) of the S.C. and S.T. (Prevention of Atrocities Act).

11. On similar line, the learned Single Judge of this Court, in the matter of **Santosh Bhagat and Another (supra)** was pleased to grant pre-arrest bail to the appellants therein.

12. In the case in hand, first informant Vilas Kamble in his First Informantion Report lodged on 20.12.2019 though had averred that he belongs to 'Chambhar' Caste, he has not stated anything to show that the appellants herein are not belonging to either Scheduled Caste or Scheduled Tribe. Thus, one of the basic requirement as stated in the Judgment of Division Bench of this Court in the matter of **Sheikh Shama Sheikh Iqbal (supra)**, is not fulfilled by the prosecution. The papers of investigation does not shows that the investigator has collected the documents to show that the appellants herein are not belonging to other Scheduled Caste or Scheduled Tribe.

13. In this view of the matter, no prima facie case for offences under S.C. and S.T. (Prevention of Atrocities Act is made out. Therefore, bar of Section 18 and 18-A of the S.C. and S.T. (Prevention of Atrocities Act is not applicable to the case in hand.

14. So far as other offences alleged against the appellants are concerned, custodial interrogation of the appellants is not warranted.

15. In view of foregoing reasons, impugned orders rejecting applications for pre-arrest bail, moved by the appellants can not be sustained. Those are, therefore, quashed and set aside.

16. Applications for pre-arrest bail, moved by the appellants in subject crime are allowed.

17. In the event of their arrest in the said crime, the appellants shall be released on bail, on executing P.R. Bond of Rs.15,000/- and on furnishing surety in the like amount by each of them.

18. As a condition of this order, the appellants should attend the concerned police station as and when directed by the Investigating Officer for the purpose of investigation and they should cooperate the Investigator.

19. As a condition of this order, the applicants/accused shall not extend any threat inducement or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

20. As a condition of this order, the appellants should not repeat commission of similar offences in future.

21. The appeals are, accordingly disposed of.

(A. M. BADAR, J.)