

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

CRIMINAL APPEAL NO. 316 OF 2020

1. Vinod S/o. Manikrao Shinde,
Age 42 years, Occ.: Cultivator,
2. Baban S/o. Narayanrao Shinde,
Age 55 years, Occ. : Cultivator,
3. Mahadeo S/o. Baban Shinde,
Age 32 years, Occ. : Cultivator,
4. Pramod S/o. Manikrao Shinde,
Age 35 years, Occ.: Service,

All R/o. Mandva Samet Dongar,
Tq. Mehkar, Dist. Buldhana.

.... **APPELLANTS.**

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
P.S. Janefal, Tq. Mehkar, Dist.
Buldhana.
2. Ramchandra S/o. Tukaram Wadekar,
Age 70 year, Occ: Agriculturist,
R/o. Mandva Forest, Mehkar, Tq. Mehkar
Dist. Buldhana.

.... **RESPONDENTS.**

Shri A.J.Thakkar, Advocate for Appellants.
Ms S.S.Jachak, A.P.P. for Respondent No.1/State.
None for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 17, 2022.

ORAL JUDGMENT :

1. Heard learned counsel for the appellants and the learned A.P.P. for the respondent No.1/ State. None for the respondent No.2, though served.

2. **ADMIT.**

3. In this appeal order below Exh.1, dated 13/08/2020 passed by learned Special Judge, Mehkar, District : Buldana in Anticipatory Bail Application No.144 of 2020, thereby rejecting the application for grant of pre-arrest bail, filed under Section 438 of the Code of Criminal Procedure in Crime No. 256 of 2020, dated 27/07/2020, registered with Police Station, Janefal, District : Buldana, for the offences punishable under Sections 143, 147, 149, 354, 324, 323, 504, 506 of the Indian Penal Code and Sections 3(1)(2), 3(1)(r), 3(1)(s), 3(1)(u), 3(1)(w), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act”), is under challenge.

4. It is the case of the prosecution that the complainant lodged a complaint on 27/07/2020 stating therein that he had been to Mandva Forest village to get some labour work and returned back at 08:00 a.m.. At that time, he saw his daughter Yamutai standing outside their house and the appellants along with other co-accused persons went towards her. At that time, the appellant Nos.2 and 3 and co-accused Manikrao Shinde had wooden sticks in their hands. All the accused persons threatened the complainant's daughter and asked her to convey her father i.e. the complainant to return back their land otherwise she would be molested, killed or raped and after altercation, the appellant No.3 hit Yamutai on her head and the appellant No.2 and co-accused Manikrao hit his daughter Yamutai on her back with wooden stick. Further, the appellant Nos. 2 and 3 caught hold the hand of his daughter Yamutai and molested her and tore her Kurta. It is alleged that at that time his daughter fainted on the ground. Thereupon, the complainant's daughters, sons and wife rushed to help Yamutai. At that time, the appellant No.3, along with other accused persons, caught hold complainant's daughter Kiran and repeatedly hit on her face. The appellants, along with other accused persons, assaulted the sons and daughters of the complainant. It is further alleged that the wife of the appellant No.2-Nanda Baban Shinde

hurled casteiest insults on the complainant and his family and threatened them with their life.

5. Shri Thakkar, learned counsel for the appellants submits that there are no allegations against the appellants, which would attract the provisions of the Atrocities Act. He submits that the allegation that the complainant and his family was abused on their caste, is against the wife of the appellant No.2 i.e. Nanda. However, there are no allegations against the appellants that they abused the complainant or his family on their caste. It is further submitted that the dispute arose out of an agricultural land and in the First Information Report (FIR) there are no allegations that the appellants and other accused persons have committed the alleged act because the complainant and victim were of the Scheduled Caste. It is further pointed out that all other accused persons have already been released on bail and the custody of the appellants is not required.

6. Shri Thakkar, learned counsel for the appellants further points out that there was a counter F.I.R. filed by Sumitra Pramod Shinde against the complainant and his family and the said F.I.R. was registered

as Crime No.257 of 2020 on 27/07/2020 with Police Station Janefal, District : Buldana for the offences punishable under Sections 143, 147, 149, 354, 324, 323, 294, 504 and 506 of the Indian Penal Code.

7. He, therefore, prays that the *ad-interim* protection granted by this Court, vide order dated 21/08/2020 may be confirmed in view of the fact that the appellants attended the Police Station as directed by this Court and there is no complaint of misuse of liberty.

8. On the other hand, the learned A.P.P. strongly opposed the present appeal and submits that as *prima-facie* involvement of the appellants is apparent on the face of the allegations and as the provisions of the Atrocities Act are made applicable, bar under Section 18 of the Atrocities Act would apply to this Case.

9. I have perused the case diary and also the contents of the F.I.R.

10. It is the case of the prosecution that the appellants and other accused persons threatened the daughter of the complainant-Yamutai and

asked her to convey to the complainant that he should return back the land of the appellants and accused persons otherwise she would be molested, killed or raped. The said allegations show that there was a dispute between the accused persons and the complainant and his family, relating to an agricultural field and the quarrel took place out of the said dispute.

11. In the F.I.R. there are no allegations that the appellants and accused persons allegedly assaulted the complainant and his family for the reason that they belong to a particular caste.

12. Moreover, there are no allegation that the appellants have abused the complainant or his family on caste. The said allegation is only against one Nanda Baban Shinde, who is the wife of the appellant No.2. However, there are no such allegations against the appellant.

13. The Hon'ble Supreme Court of India in the case of *Hitesh Verma..vs..State of Uttarakhand*¹, has held that all insults or intimidation to a person will not be an offence under the Act of 1989, unless such insult or intimidation is on account of victim belonging to Scheduled

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Caste or the Scheduled Tribe. It is further held that assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment.

14. Similarly in the case of *Dr.Subhash Kashinath Mahajan ..vs..State of Maharashtra*¹, the Hon'ble Supreme Court of India has held that exclusion of provision for anticipatory bail cannot possible by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated.

15. In that view of the matter, *prima-facie*, as no incriminating material is available, which would attract the provisions of the Atrocities Act against the appellants, I am of the opinion that bar under Section 18 of the Atrocities Act would not come in the way of the appellants in this case.

16. The learned A.P.P. is not disputing that all other co-accused have been released on bail. The injuries on the person of victims are simple in nature.

1 2018 All MR (Cri) 1773 (S.C.)

17. There is no allegation that after granting ad-interim anticipatory bail by this Court vide order dated 21st August 2020 the appellants have misused the liberty or breached any of the conditions imposed upon the appellants while granting *ad-interim* anticipatory bail.

18. In that view of the matter and as the appellants attended the Police Station, as directed to them, I am of the considered view that the custody of the appellants is not necessary. Accordingly, I pass the following order:

- i) The Criminal Appeal is allowed.
- ii) The order dated 13/08/2020 passed below Exh.1 by the learned Special Judge, Mehkar, District : Buldana in Anticipatory Bail Application No.144 of 2020 is quashed and set aside.
- iii) The order passed by this Court on 21/08/2020, granting ad-interim anticipatory bail to the appellants, is confirmed.
- iv) The appellants shall attend the concerned Police Station as and when their presence is required.

The Criminal Appeal stands **disposed of** accordingly.

JUDGE