

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

CRIMINAL APPEAL NO.9/2021

- 1] Vasant S/o Kerba Shinde
Age 45 years, Occu-Agril.,
- 2] Shrinivas S/o Vasant Shinde
Age 20 years, occu-Agril & Education
- 3] Kalyan S/o Hari Shinde
Age 23 years, Occu-Agril & Education
- 4] Kerba S/o Maroti Shinde
Age 85 years, Occu-Agril.,
All R/o Mangrul, Tq. Loha,
Dist.Nanded.

.. APPELLANTS

VERSUS

- 1] The State of Maharashtra
Through Malakoli Police Station
Nanded.
- 2] Dattu S/o Tukaram Surwanshi,
Age 60 years, Occu : Agri,
R/o Nandi Bijalgaon;
Tq. Aurad, Dist.Bidar (Karnatak).

.. RESPONDENTS

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Shri V.B.Dhage, Advocate for appellants
Smt.R.P.Gaur, A.P.P. for respondent no.1.
Shri G.G.Suryawanshi, Advocate for respondent no.2.

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CORAM : MANGESH S. PATIL, J.
DATE : 01.02.2021

ORAL JUDGMENT :-

Heard.

2] Admit. With the consent of both the sides, matter is heard finally at the stage of admission.

3] This is an appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") preferred against order of the Special Court refusing anticipatory bail to the appellants for the offences punishable under under Sections 323, 504, 506 read with Section 34 of the I.P.C. and Sections 3(1)(r) and 3(1)(s) and 3(2) (va) of the Atrocities Act being Crime No.199/2020 registered at Malkoli Police Station, Dist. Nanded.

4] The allegations in the F.I.R. are to the effect that the appellants had borrowed money from the informant. With a view to insist for its refund, the informant had been to their house, all the appellants were present there and no sooner he demanded money they hurled abuses on caste line and assaulted him. They also threatened to kill him.

5] The learned advocate for the appellants submits that the appellants are innocent and are being falsely implicated. The allegations about hurling abuses are vague and omnibus and not attributed to any specific appellant. They have never borrowed money from the informant. Even otherwise except the appellant no.1 other appellants have no concern with the incident. Going by the allegations in the F.I.R. the incident is stated to have taken place inside the appellants' house and it would not be in 'public view' within the meaning of words assigned under the Atrocities Act. The learned advocate would further submit that accepting the allegations at their face value, there is

nothing to be discovered by or recovered from the appellants. They are ready to cooperate the Investigating Officer. This Court in several such matters has exercised the discretion in favour of granting anticipatory bail. Considering the allegations, offence under the Atrocities Act cannot be made out and consequently the bar under Section 18 of that Act would not apply.

6] The learned A.P.P. and the learned advocate for the original informant strongly oppose the request. They submit that the investigation is still at a preliminary stage. There are specific allegations about hurling abuse on caste line and assault. They would further point out that there are statements of the witnesses who are the neighbours stating that the incident had taken place near house of the appellants, which would indicate that it was committed in public view.

7] The learned A.P.P. and the learned Advocate for the informant would further point out that there are criminal antecedents. Already the appellants are involved in a similar Crime No.200/2019 which was also under the Atrocities Act. They had approached this Court and secured ad-interim relief. One of the conditions for grant of such ad-interim relief was not to get involved in similar crime. Still they have committed this crime, in breach of that condition. Considering all the aforementioned facts and circumstances, there are not enough circumstances to cross the bar contained under Section 18 of the Atrocities Act.

8] I have carefully gone through the papers. It is trite that Section 18 of the Atrocities Act is not an anathema for grant of anticipatory bail in appropriate cases, subject to scrutiny of all the attending circumstances.

9] A careful perusal of the aforementioned facts and circumstances and the papers of the investigation would clearly indicate that the informant had been to the house of the appellants for demanding money and was abused on caste line and was assaulted. Statements of the witnesses indicate that the incident had taken place near the house of the appellants and not inside the house. It therefore appears that the incident has taken place in public view.

10] Besides, as has been pointed out the appellants have already been involved in a crime under Atrocities Act. There are no allegations in the appeal memo showing that both the informants are acting in tandem to falsely implicate them. It is indicative of the fact that the appellants have been involved and indulging in the offences under the Atrocities Act. As can be seen, in the conditions imposed by this Court while granting them ad-interim relief by the order dated 14/1/2020, in Criminal Appeal No.26/2020 that they shall not commit an offence, it was expected that in the appeal memo, the appellants would explain if at all they were perceiving that both the informants were acting in collusion to harass them.

11] It also appears that order regarding ad-interim anticipatory bail granted by this Court and particularly the condition imposed therein was also not brought before the Special Court which rejected the bail application by the impugned order.

12] Taking into account the entire conspectus of the matter and the material discussed hereinabove, there is reason to believe that the appellants have *prima facie* committed the offence under the Atrocities Act. In view of Section

18 of that Act, the appeal is liable to be dismissed. However, considering the age of the appellant no.4, I am inclined to allow anticipatory bail only to his extent by putting him to certain conditions.

13] The Appeal is partly allowed. The impugned order to the extent it refuses anticipatory bail to the appellant no.4 is quashed and set aside.

i] In the event of arrest of the appellant No.4 Kerba Maroti Shinde in connection with Crime No.199/2020 registered at Malkoli Police Station, Dist. Nanded for the offences punishable under Sections 323, 504, 506 read with Section 34 of the I.P.C. and Section 3(1)(r) and 3(1)(s) and 3(2)(va) of Atrocities Act, he shall be released on bail on his executing personal recognizance for an amount of Rs.20,000/- (Rs.Twenty thousand only) and furnishing a solvent surety in the like amount subject to following conditions :

a] He shall attend the concerned Police Station as and when called by the Investigating Officer and shall cooperate him till filing of the charge sheet.

b] He shall not tamper the evidence or influence the witnesses.

ii] The appeal to the extent of appellant Nos.1 to 3 is dismissed.

[MANGESH S. PATIL, J.]

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