

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

904 CRIMINAL APPEAL NO.43 OF 2021

1. Santosh s/o Balaji Khairwad
Age : 36 years, Occu : Labour,
R/o. Chandola, Tq. Mukhed,
Dist. Nanded.
 2. Prakash s/o. Balaji Khairwad
Age : 32 years, Occu : Labour,
R/o. Chandola, Tq. Mukhed,
Dist. Nanded.
 3. Vikas Namdeo Khairwad
Age : 22 years, Occu : Agri,
R/o. Chandola, Tq. Mukhed,
Dist. Nanded.
 4. Pandurang Gyanoba Kamble
Age : 35 years, Occu : Agri,
R/o. Chandola, Tq. Mukhed,
Dist. Nanded.
- .. Appellants

Versus

1. State of Maharashtra
 2. Kapil s/o. Gangaram Gaikwad
Age : 23 years, Occu : Labour,
R/o. Chandola, Tq. Mukhed,
Dist. Nanded.
- .. Respondents

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Advocate for the Appellants : Mr S.D. Hiwrekar
APP for Respondent No.1 / State : Mr K.S. Patil
Advocate for Respondent No.2 : Mr Rohit Patwardhan (Appointed)

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

Date : 24-02-2021

PER COURT :-

1. These four appellants are before us in view of the orders of the Trial Court dated 06-01-2021 and 19-01-2021 passed in Criminal Bail Application Nos.222 of 2020 and 15 of 2021, respectively vide which, both the applications have been rejected.

2. We have heard the strenuous submissions of the learned Advocate for the appellants / original accused, the learned Prosecutor on behalf of respondent no.1 / State and the learned Advocate appointed on behalf of respondent no.2. With their assistance, we have gone through the record available.

3. The FIR dated 15-10-2020 recorded at 14:19 hrs., at the behest of respondent no.2, indicates that, accused nos.1 and 2 operate a liquor shop. The informant had reached the shop at about 04:30 p.m. on 12-10-2020 for purchasing one I.B. quarter. Accused no.1 Santosh charged him Rs.250/- for the said bottle. The informant questioned accused no.1 as to why he charged Rs.250/-, when the bottle actually costs Rs.200/-. Accused no.1 Santosh got infuriated and abused the informant. His brother accused no.2 Prakash and the other accused namely, Satish Balaji Khairwad, Vikas Namdeo Khairwad and Pandurang Gyanoba Kamble, abused the

informant. Accused no.1 Santosh used an iron rod to strike on the left hand of the informant, which caused a fracture of his left arm bone. Accused no.2 Prakash then used the same rod and inflicted two blows on the legs of the informant. The FIR indicates that accused no.3 Vikas Namdeo Khairwad and accused no.4 Pandurang Gyanoba Kamble, have used their fists and kicks to assault the informant.

4. On 16-10-2020, the supplementary statement of the informant was recorded, in which, he has repeated the contents of the FIR dated 15-10-2020 and has further added allegations against accused no.1 Santosh and accused no.3 Vikas of having used fraudulent and filthy language with attributes towards the caste of the informant.

5. The FIR, therefore, indicates that Sections 325, 323, 504, 506 r/w. Sec.34 of the Indian Penal Code (IPC) were attracted. Pursuant to the supplementary statement, Section 326 of the IPC along with Section 3 (1)(r)(s) and 3 (2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter '1989 Act') were also added.

6. The learned Prosecutor and the learned Advocate representing the informant contend that, specific allegations have been made in the supplementary statement and it is obvious that as the informant belongs to the Scheduled Caste, the accused have abused him for belonging to the Scheduled Caste.

7. In the matter of **Vilas Pandurang Pawar Vs. State of Maharashtra (2012) 8 SCC 795** and **Prathvi Raj Chauhan V/s. UoI (2020) 4 SCC 727**, the Hon'ble Apex Court has concluded that if a *prima facie* offence is made out thereby attracting provisions of the 1989 Act, the bar of Section 18 in granting anticipatory bail would be applicable.

8. Insofar as the FIR is concerned, the informant has not even whispered about any caste attributes. When the said FIR was recorded on 15-10-2020 at 14:19 hrs, there could have been no impediment for the informant to narrate even those foul utterances by the accused vide which he was abused on his caste. The informant approached the police authorities on the next day, which is 16-10-2020 and has narrated a long list of most foul and filthy language having been allegedly used by accused no.1 Santosh and accused no.3 Vikas.

9. *Prima facie*, we are of the view that if the informant could narrate these foul utterances within 24 hours of the recording of the FIR, there was no impediment for him to narrate those utterances on the very day on which he registered the FIR. Moreover, the FIR was lodged after three days of the incident.

10. Be that as it may, *prima facie*, the FIR indicates that accused no.1 Santosh and accused no.2 Prakash had abused the informant in foul language and had used an iron rod to assault him resulting in a fracture injury to his left arm, and further injuries to his legs. Both of them have evaded arrest for the past four months. Their custodial interrogation in the process of investigation of the crime and for recovery of the iron rod, would be necessary. As such, this appeal is rejected to the extent of accused no.1 Santosh and accused no.2 Prakash.

11. Insofar as the role of accused no.3 Vikas and accused no.4 Pandurang is concerned, the FIR indicates that both have used their fists and legs to give physical blows to the informant. They had not used abusive words attributing aspersions to the caste of the

informant. It is only through the supplementary statement that the informant, *prima facie*, has improvised his complaint.

12. In these peculiar circumstances, we find that an offence attracting the provisions of the 1989 Act is not, *prima facie*, made out against accused no.3 Vikas and accused no.4 Pandurang. These observations are restricted to this order.

13. As such, this Criminal Appeal is partly allowed to the extent of accused no.3 Vikas and accused no.4 Pandurang. Consequentially the impugned order passed by the trial Court dated 06-01-2021 in Criminal Bail Application No.222 of 2020, filed by accused no.3 Vikas and accused no.4 Pandurang, is quashed and set aside.

14. In the event of arrest of accused no.3 Vikas and accused no.4 Pandurang, they shall be released on bail on the following conditions :-

- (a) Both, accused no.3 namely Vikas Namdeo Khairwad and accused no.4 namely Pandurang Gyanoba Kamble, shall furnish a P.R. Bond in the sum of Rs.25,000/- (Rs.Twenty Five Thousand Only) each and a solvent surety of the like amount, each.

- (b) Both shall mark their attendance with the Mukhed Police Station, Tal. Mukhed, Dist. Nanded on every Tuesday and Friday in between 10:00 a.m. and 01:00 p.m. till commencement of the trial.
- (c) Their attendance shall be recorded by the Station House Officer by obtaining their signatures in the station diary.
- (d) Both would tender their recent photographs and a self attested copy of the Election Commission voter ID card or Aadhar card along with the permanent address proof.
- (e) They shall not attempt to contact the informant or the two persons who had rescued the informant or any other person who is related to the informant and / or is likely to be a witness in the matter, either directly or indirectly.
- (f) These two accused shall not indulge in any act amounting to an offence.
- (g) Violation of any of the above conditions would be a ground for the State or the informant to seek cancellation of bail.

15. Since we had appointed learned Advocate Shri Rohit Patwardhan to represent respondent no.2 in this matter, we quantify his fees at Rs.3,000/- (Rs.Three Thousand Only) to be paid by the High Court Legal Services, Sub-Committee, Aurangabad.

(B. U. DEBADWAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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