

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

918 CRIMINAL APPEAL NO.51 OF 2021

- 1) Nandkishor S/o Haribhau Kadam,
Age 40 years, Occ. Agriculture,
- 2) Sunil S/o Haribhau Kadam,
Age 42 years, Occ. Agriculture,
- 3) Kapil S/o Haribhau Kadam,
Age 36 years, Occ. Agriculture,
- 4) Dipak S/o Haribhau Kadam,
Age 40 years, Occ. Agriculture,

All R/o. Futana, Taluka-Kalamnuri,
District – Hingoli.

...Appellants

Versus

- 1) State of Maharashtra,
Through Police Station Officer,
Akhada Balapur Police Station,
Hingoli, District – Hingoli.
- 2) Shivaji Ramrao Narwade,
Age 68 years, Occ. Agriculture
R/o. Futana, Taluka-Kalamnuri,
District – Hingoli.

...Respondents

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Advocate for Appellants : Mr. Swapnil S. Rath
APP for Respondent No.1-State : Mr. V.S. Badakh
Advocate for Respondent No.2 : Mr. M.B. Sandanshive

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CORAM : MANGESH S. PATIL, J.

DATE : 05 MARCH 2021

PER COURT :

The learned Advocate for the original informant /

respondent tenders across the bar affidavit-in-reply. It is taken on record.

2. Heard. With the consent of the parties heard finally. Admit.

3. This is an Appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter, "the Atrocities Act"), seeking anticipatory bail and being aggrieved and dissatisfied by the rejection of their such request by the learned Special Judge in connection with Crime No.438/2020 registered with Akhada Balapur Police Station, Hingoli, Dist. Hingoli for the offences punishable under Section 143, 147, 149, 324, 323 and 506 of the Indian Penal Code and Section 3(1) (r) and 3(1) (s) of the Atrocities Act.

4. Stated in brief, the allegations as can be discerned from the FIR and the papers of the investigation are to the effect that on 28 December 2020, a quarrel had taken place, wherein, the accused persons-appellants are stated to have abused the informant's son. With a view not to escalate the things, no complaint was lodged immediately.

5. It is then alleged that on the next day in the morning hours while the informant was going for answering nature's call, all the accused persons accosted him, threatened him, hurled abuses on caste

lines and assaulted him. It is then alleged that the accused persons then assaulted his son Balaji as well. The three women from the accused side, also assaulted Balaji with a foot-wear. When the informant tried to rescue him, he was again assaulted by the appellant Nandu. The FIR was lodged on 31.12.2020 and the offence was registered.

6. The learned Advocate for the appellants would submit that mere hurling of abuses by calling the caste name is not an offence punishable under Section 3(1) (r) or 3(1) (s) of the Atrocities Act. The allegations about the son of the informant having been assaulted by foot-wear are against the woman accused, who are not the appellants herein. Except the offences under the Atrocities Act no other offences under the Indian Penal Code, being levelled against the appellants, are bailable ones. There are complaints and cross-complaints between the two sides, when no serious injuries have been sustained by either the informant or his son. The incident having taken place without any pre-meditation, the appellants *prima facie* cannot be attributed with either the knowledge or intention so far as the action of the co-accused women, who had assaulted Balaji with foot-wear. He would therefore, submit that the learned Special Judge has grossly erred in appreciating all these facts and circumstances and has illegally refused to grant bail in the event of arrest.

7. The learned APP and the learned Advocate for the

respondent-informant submit that the offence is serious. In fact, one more offence of similar kind is registered against Appellant No.1. He is habituated in committing such crimes. Even the police were reluctant to register the offence promptly. The informant and his family members had to put-up a grievance with the Superintendent of Police and it is thereafter that the offence was registered belatedly. Registration of several other crimes against the informant by the appellants and their associates clearly show that there is a hostile environment in the village and the informant is at the receiving end. Granting anticipatory bail to the appellants is certain to cause further prejudice not only to the Investigating Officer but even to the informant. Specific allegation is levelled against the appellants in carrying out the assault and no fault can be found with impugned judgment and order refusing to grant anticipatory bail.

8. I have carefully gone through the papers of the investigation. Accepting the allegations in the FIR, there were several incidents one after the other. The initial one had taken place on 28 about which no grievances was made. It is the second episode, which has taken place on the next day, wherein, the allegations about assault are made against the present appellants and the other accused. Pertinently, the injuries sustained by the informant and his son are simple. The offences is being levelled against the appellants under the Indian Penal Code are bailable ones.

9. So far as the offences under Section 3(1) (r) and 3(1) (s) of the Atrocities act are concerned, though it has been asserted that the informant and his son were abused on caste lines by calling name of the caste, as has been rightly observed by the Special Judge, mere calling a person by the name of his caste would not constitute an offence under Section 3 (1) (s) of the Atrocities Act.

10. The three women accused are stated to have assaulted son of the informant by name Balaji with a foot-wear causing him severe insult and annoyance, which would constitute an offence under Section 3(1) (r) of the Atrocities Act. However, those women are not before this Court in the present Appeal.

11. As far as the nexus between the actions attributable to these three women accused and the present appellants are concerned, it is apparent that the incident had not taken place with pre-meditation. It is when the accused were allegedly assaulting the informant that Balaji arrived on the spot of scene incidentally, while coming back home from his field. It is then alleged that when Balaji arrived, he was also assaulted and the three women accused had hit him with foot-wear by dragging him. It is, therefore, apparent that the knowledge and intention of the actions of these three women cannot be *prima facie* attributable to the present appellants. If such is the state of affairs, irrespective of the antecedents of the Appellant No.1, following the

principles laid down in the case of **Prathvi Raj Chauhan Vs. Union of India and Others, (2020)4 SCC 727**, the offences being levelled against the appellants under the Atrocities Act are not made out. Consequently, the the bar contained under section 18 and 18-A of the Atrocities Act would not be applicable as laid down in the case of **Prathvi Raj Chauhan** (*supra*).

12. The learned Special Judge has not appreciated the allegations in the proper perspective, mainly to reveal the exact role of the appellants and the act of the women accused in assaulting the informant's son Balaji by a foot-wear.

13. The Appeal is allowed and the impugned judgment and order is quashed and set aside.

14. In the event of arrest of the appellants in connection with Crime No.438/2020 registered with Akhada Balapur Police Station, Hingoli, Dist. Hingoli for the offences punishable under Section 143, 147, 149, 324, 323 and 506 of the Indian Penal Code and Section 3(1) (r) and 3(1) (s) for the Atrocities Act, 1989, they shall be released on bail on their executing personal recognizance for an amount of Rs.20,000/- (Rupees twenty thousand) each and furnishing a solvent surety in the like amount each, subject to following conditions.

(a) They shall attend the concerned Police Station as and

when called by the Investigating Officer and shall co-operate him.

- (b) They shall not tamper the evidence or influence the witnesses.
- (c) They shall shall not repeated the crime.

(MANGESH S. PATIL, J.)

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