

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

CRIMINAL APPEAL NO. 68 OF 2021

Ashok Eknath Gavali ... Appellant
Versus
The State of Maharashtra and another ... Respondents

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Mr. M. P. Gandle, Advocate for the appellant
Mr. S. N. Kendre, APP for respondent No.1
Mr. A. M. Gaikwad, Advocate for respondent No.2

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CORAM : R. G. AVACHAT, J.

DATED : 19th JUNE, 2021

PER COURT :-

. The appearance of Mr. S. S. Dargad, learned Advocate (appointed) for respondent No.2 is discharged, since respondent No.2 has engaged another advocate.

2. Heard.

3. The challenge in this appeal is to the order dated 30.01.2021, passed by the learned Additional Sessions Judge, Beed, rejecting the application of the appellant for anticipatory bail.

4. The appellant - accused claims to have apprehension of being arrested in connection with Crime No.005/2021, registered

with Shirur (Kasar) Police Station, Beed, for the offences punishable under Sections 143, 147, 149, 323, 504, 506 of the Indian Penal Code and Section 3(1) (r), 3(1) (s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

5. The learned Advocate for the appellant would submit that there is dispute between the appellant and the informant over agricultural field. The First Information Report (FIR) has been lodged five days after the alleged incident. Except the offence under Section 3(1) (r), 3(1) (s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, all other offences alleged to have been committed by the appellant, are bailable one. He, therefore, urged for allowing the appeal.

6. The learned APP and Shri A. M. Gaikwad, learned Advocate appearing for respondent No.2 – informant would, on the other hand submit that the informant had been to the police station immediately after the incident. The police referred him to the hospital for medical check-up. The delay has, thus, been explained. The allegations in the FIR unequivocally make out the offence under Section 3(1) (r), 3(1) (s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, against the appellant herein.

According to them, Section 18 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, bars grant of bail under Section 438 of the Code of Criminal Procedure.

7. It is true that Section 18 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, states that nothing in Section 438 of the Code of Criminal Procedure, shall apply in relationship to any case involving the arrest of any person on attribution of having commission of offence under this Act.

8. True, the allegations in the F.I.R. may, *prima facie*, make out an offence under the Act. There is, however, every possibility of the allegations being false or untrue. In the case of **Prithvi Raj Chauhan Vs. Union of India and ors.**, (2020)4 SCC 727, the Apex Court, in paragraph 2, observed thus :-

“2. *It is submitted that Section 18-A has been enacted to nullify the judgment of this Court in Subhash Kashinath Mahajan Vs. State of Maharashtra, (2018)6 SCC 454, in which the following directions were issued: (SCC p. 513, para79)*

79.

79.1.

79.2. *There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.”*

9. The FIR has been lodged five days after the alleged incident. There is dispute between the appellant and the informant over agricultural field. The offences alleged to have been committed by the appellant, which are punishable under the Indian Penal Code, are bailable one. The contention of the appellant is that only with a view to see him arrested for the offence punishable under Section 3(1) (r), 3(1) (s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, has been invoked in the FIR, may sound reasonable. Considering the allegations in the FIR, the custodial interrogation of the appellant is not required. Five days delay in lodging of the FIR causes doubt about veracity of the allegations in the FIR. The appeal, therefore, deserves to be allowed.

10. In the result, the appeal succeeds. The same is allowed.

11. The order dated 30.01.2021, passed by the Additional Sessions Judge, Beed, in Criminal Bail Application No.42 of 2021, is set aside.

12. In the event of arrest of the appellant in connection with Crime No.005/2021, registered with Shirur (Kasar) Police Station, Beed, for the offences punishable under Sections 143, 147, 149, 323,

504, 506 of the Indian Penal Code and Section 3(1) (r), 3(1) (s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, the appellant be released on bail on executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

13. The appellant shall appear before the investigating officer as and when required. The appellant shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]

SMS