

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

CRIMINAL APPEAL NO.85 OF 2021

**NAGNATH GANGADHAR MANE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Appellant : Shri Vaibhav B. Dhage
APP for Respondent No.1 - State : Shri K. S. Patil
...

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

DATE : 02ND MARCH, 2021

PER COURT :

1. By this appeal, the appellant seeks anticipatory bail in Crime No. 0007 of 2021 wherein, he has been arrayed as accused No.2. The trial Court has rejected his application vide order dated 04-02-2021, concluding that the provisions of the Indian Penal Code along with the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been invoked and as such the bar of Section 18 would apply, in so far as the relief of anticipatory bail is concerned.

2. We have considered the strenuous submission of the learned counsel for the appellant and the learned prosecutor on behalf of the State.

3. The appellant places reliance upon the judgment of the

Hon'ble Apex Court in the matter of *Hitesh Verma Vs. State Of Uttarakhand and Another [2020 AIR (SC) 5584]* and the judgment of the Single Judge Bench of this Court in the matter of *Krishna And Others Vs. The State of Maharashtra and Others [2019 (4) Mh.LJ (Crl.)178]*.

4. With the assistance of the learned counsel, we have gone through the appeal paper.

5. The contention of the appellant, primarily, is based on fight that took place between two groups. The appellant is part of the group comprising of his father and a brother. The informant, respondent No.2 is said to be a part of another group against whom the present appellant has preferred an FIR bearing Crime No. 0006 of 2021. These features form the basis of the contention of the appellant that these two cross FIR are filed by the two groups and as the appellant had preferred his FIR first in time, the informant respondent No.2 preferred his FIR immediately thereafter as a counter blast. Hence, the two FIR Nos. 0006 of 2021 and 0007 of 2021.

6. He has further contended that there was one axe used for assaulting each other. The informant has suffered an axe wound on his ankle, allegedly inflicted by the present appellant. As per the FIR, preferred by the present appellant, the accused therein have

also used an axe which was snatched by the other group. It is, therefore, contended before us that one axe held by the appellant's group by which it appears that the other group was assaulted, was snatched by the other group and one of them, namely Kailash, used that axe for causing injuries to the present appellant.

7. It is, then, submitted that the members of the other group have not preferred any application for anticipatory bail, as per the knowledge of the appellant. In so far as FIR No. 007 of 2021 registered by respondent No.2 is concerned, the appellant, his father and his brother are the accused and two amongst them have been granted anticipatory bail by the trial Court.

8. At this stage, we cannot prejudge as to which group had made the assault first in time and whether any group had never assaulted the other side. The FIR before us indicates that the appellant, his father Gangadhar along with brother Shivanand, had abused the informant by casting aspersions on his scheduled caste in an open field on the *Bandh* (a path between two agricultural fields used by the agriculturists as a way). It is further set out in the FIR that after making aspersions on his scheduled caste, the father Gangadhar and the younger brother Shivanand pinned down the informant and the present appellant picked up his axe and gave a blow on the ankle of the informant. All three of them stated that

the informant should be finished once and for all. However, as the informant started screaming desperately and called for help, agriculturists from the adjoining agricultural field, namely Maruti Wawle, Kapil Kanhale, Dnyanu Mane and Tejarao Jadhav came rushing and rescued the informant. Thereafter, the two sons of the informant also came running and carried the informant to the police station, where from he was sent to the Civil Hospital. Considering the extent of his injury, he was transferred to a private hospital at Nanded.

9. In *Hitesh Verma* (supra), the offences were registered under Section 3(1)(x) and 3(1)(e) of the Act, 1989. These offences pertain to forcibly compelling a member of a scheduled caste or scheduled tribe to remove his clothes or forcibly tonsuring his head or remove his moustache or painting his face or body which is derogatory to human dignity or corrupting water of any spring, reservoir or any source ordinarily used by the members of the scheduled castes and scheduled tribes. So also, in *Hitesh Verma* (supra), the allegations were of abusing the informant within the four walls of the building. There was outsider within the said walls to listen or view the insults. This judgment would, therefore, not be applicable in the present case.

10. In *Krishna And Others* (supra), the offence was under

3(1) (r) and (s) which pertains to humiliating a person belonging to a scheduled caste or scheduled tribe in public view and abusing a person belonging to any of such category within public view. Simple injury was the factor considered by the Single Judge Bench of this Court while granting anticipatory bail.

11. We find that the view taken by the Hon'ble Apex Court in *Vilas Pandurang Pawar And Another Vs. State of Maharashtra and Others [(2012) 8 Supreme Court Cases 795]* and *Prathvi Raj Chauhan Vs. Union Of India and Others [(2020) 4 Supreme Court Cases 727]* was obviously not before the learned Single Judge. In *Vilas Pandurang Pawar And Another* (supra) and *Prathvi Raj Chauhan* (supra), the Hon'ble Apex Court has held that if an offence is, prima facie, made out under any of the provision of the 1989 Act, the bar of Section 18 would apply to the extent of grant of anticipatory bail.

12. Having considered the contents of the FIR, it is obvious that all the accused knew that the informant belonged to a scheduled caste category. They are said to have used foul words as regards his caste. The appellant is alleged to have used an axe to strike at the ankle of the informant apparently with the intention of chopping off his leg ankle downwards. In view of the injury suffered, and since the appellant indicated that he would finish the

informant, that four neighbouring agriculturists rushed to the rescue of the informant and it is under these circumstances that the informant was rescued from the clutches of the appellant.

13. We, also deem it appropriate to note that, ***Vilas Pandurang Pawar And Another*** (supra) and ***Prathvi Raj Chauhan*** (supra) were not cited before the trial Court and, therefore, it concluded that, prima facie, provisions of the Act, 1989, may not be applicable. The trial Court committed an error in concluding that the assault on the informant was in an agricultural field and, therefore, may not be termed as a public place. It is apparent that the trial Court has misdirected itself. Taking into account the contents of the FIR, we are of the view that Section 3(2)(v) and 3(2)(va) of the Act, 1989 would be attracted.

14. We, therefore, find that this is not a fit case to be entertained as the bar of Section 18 would also apply. As has been rightly held by the trial Court, the axe used by the appellant is to be recovered and therefore, his custodial interrogation is necessary.

15. As such, we do not find any merit in this appeal and the same is, therefore, dismissed.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)