

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

920 CRIMINAL APPEAL NO. 150 OF 2021

1. Mujeeb Ahmed S/o. Ameeruddin Ansari ...**APPELLANTS**
Age-53 years, Occu-President, (Ori. accused)
Municipal Council, Mudkhed,
R/o. Bazaar Mohalla, Mudkhed,
Tq. Mudkhed, Dist. Nanded
2. Abdul Salam S/o. Abdul Sattar
Age-46 years, Occu-Service,
R/o. Madina Nagar, Mudkhed,
Tq. Mudkhed, Dist. Nanded
3. Shaikh Moinuddin S/o. Shaikh Ismail,
Age-47 years, Occu- Driver,
R/o. Sainagar, MAFCO Road, Nanded

VERSUS

1. The State of Maharashtra ...**RESPONDENTS**
2. Bajrang S/o. Wamanrao Khodake
Age-47 yers, Occu-Labour,
R/o. Ashoka Nagar, Mudkhed,
Tq. Mudkhed, Dist. Nanded

Mr. R. N. Dhorde, senior counsel i/by Mr. V. R. Dhorde, Advocate for the appellants

Mrs. Geeta L. Deshpande, APP for the respondent/State

Mr.H. V. Patil, Advocate h/f Mr. Amol A. Bhagat, Advocate for the respondent No.2

CORAM : SURENDRA P. TAVADE, J.

RESERVED ON : 10-08-2021

PRONOUNCED ON : 13-08-2021

P. C.

. The appellants have preferred this appeal against the impugned order dated 05-03-2021 passed by the learned Additional Sessions Judge, Nanded below Exh.1 in MCA Bail No. 121 of 2021. The appellants are shown as accused in Crime No. 32 of 2021 registered with Mudkhed Police Station, Dist. Nanded for the offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (hereinafter referred to as the 'Atrocities Act' for the sake of brevity).

2. The appellants had submitted MCA Bail No. 121 of 2021 for pre-arrest bail in above mentioned crime. Said application came to be rejected by the Additional Sessions Judge, Nanded vide order dated 05-03-2021.

3. Facts give rise in the present appeal can be summarized as under:-

a] Respondent No. 2 has filed FIR on 10-02-2021 with Mudkhed Police Station, Dist. Nanded. It is alleged in the FIR that on 08-02-2021 at about 4.00 to 4.30 pm the respondent No.2 had been to Municipal Council, Mudkhed to meet the Chief Executive Officer. The appellant No.1 is President of the Municipal Council, Mudkhed on

seeing the respondent No. 2, the appellant No.1 accosted him and asked why he came in the office of Municipal Council and nothing will be done and respondent No.2 was asked to go away. It is further alleged that the appellant No.1 held collar of respondent No.2 and abused him over his caste by calling him 'Dhed'. Thereafter, appellant Nos. 2 and 3 arrived on the spot. Both of them held respondent No.2. The appellant No.2 asked the appellant No.1 to shot him. The appellant No.1 pulledup his shirt and took out a gun meanwhile Krishna Dehsmukh and Sumedh Khodke rushed to the spot and rescued respondent No.2. Therefore, respondent No.2 went to the Mudkhed Police Station and lodged the FIR.

4. In view of the contents of FIR, learned senior counsel vehemently submitted that FIR is filed to counter the process initiated by the appellant No.1 against contractors and officers of Municipal Council. He submitted that after becoming a Chairman of Municipal Council, the appellant No.1 had submitted a letter dated 29-06-2020 to the Chief Officer, wherein, he requested to carryout enquiry of alleged fraud played by contractors and some officers of Municipal Council. Similar application also submitted to the District Collector. On the basis of said application of appellant No.1, the District Collector had constituted three members committee to enquire into the allegations. The District Collector received the report of committee. On the basis of said report the District Collector issued notices on 30-12-2020 to Chief Officer, Contractors, Engineers and some Officers of Municipal Council. Documents to

that effect are produced in this appeal. It appears that the appellant No.1 had initiated action against engineers, contractors for sub-standard work of building and roads undertaken by the Municipal Council. It appears from RTI information obtained by the appellant No.1 (exh. C page No. 40), the respondent No.2 was never entrusted any work of Municipal Council. So, it cannot be said that action of appellant No.1 was adverse to respondent No.2. On the contrary, on the complaint of respondent No.2, the appellant No.1 was prosecuted under the Prevention of Corruption Act and charge-sheet is filed against him. All above events occurred prior to lodging of present FIR. So, it can only be said that relations between the appellant No.1 and respondent No.2 were not cordial because respondent No.2 had prosecuted the appellant No.1 under the Prevention of Corruption Act.

5. In view of above facts, learned senior counsel has vehemently submitted that the appellant No.1 had initiated action against the contractor and engineer, he was falsely implicated by respondent No.2. It appears that respondent No.2 was not the victim of action initiated by the appellant No.1. Therefore, it cannot be said that in order to take revenge of appellant No.1, the respondent No.2 implicated him falsely.

6. Learned senior counsel for the appellants further submitted that according to respondent No.2 his caste is 'Mahar' and not 'Dhed'. Learned senior counsel also submitted that 'Dhed' is

different caste notified in the notification. He also invited my attention to the Maharashtra Caste Scrutiny Manual in which at Sr. No. 37 the caste 'Mahar' is described as Scheduled Caste and at entry No. 38 'Dhed' is noted as Scheduled Caste. On the basis of said provision the learned senior counsel submits that the alleged abuses does not humiliate the respondent No.2 and no offence is made out against the appellants. To substantiate point learned senior counsel relied on the ratio laid down in the case of Narad Patel Vs State of Chattisgarh reported in (2019) 6 SCC 268 wherein it was held that abuse without reference to caste or tribe will not bring the matter within imbrage of Section 3(1)(x), though the same may be punishable under Section 294 of the IPC.

7. Learned APP and learned counsel for the respondent No.2 submitted that in Marathwada the word 'Mahar' and 'Dhed' are synonyms. Therefore, the offence under Section 3(1)(r) is made out. The word 'Dhed' is used as synonyms as 'Mahar'. So, it can be said to have humiliative synonyms for caste 'Mahar' at least in the Maharashtra State particularly in region of Marathwada. It appears from the FIR that the word 'Dhed' was used to humiliate the respondent No.2. It is not the case of appellants that they were not aware of caste of respondent No.2. Therefore, prima-facie offence punishable under Sections 3(1)(r) of the Atrocities Act is made out against the appellant No.1.

8. Learned senior counsel for the appellants submits that

on going through the FIR, it appears that incident had taken place in the premise of Municipal Council. He also submits that except friend of respondent No.2 Krishna Deshmukh and nephew Sumedh Kodke nobody else had witnessed the incident. Therefore, the alleged incident had not taken place in the public view.

9. On the other hand learned APP submits that premise of Municipal Council is a public place. Many people visit the said place during working hours. The incident had taken place in presence of many persons. The Investigation Officer has recorded statements of said persons. Similarly, statements of other witnesses are also recorded under Section 164 of the Code of Criminal Procedure. The learned APP has submitted the copies of police papers wherein, it appears that the Investigating Officer has recorded the statements of many witnesses who alleged to have witnessed the incident and those were not accompanied by the respondent No.2. So, it can be said alleged incident was witnessed by many people. From the statements of said witnesses, it appears that appellant No.1 had hurled abuses to respondent No.2 over his caste. So, on going through the statements of witnesses prima-facie it appears that the incident had taken place in the public place and in public view.

10. Learned senior counsel for the appellants has relied on the ration laid down in the case of Hitesh Verma Vs State of Uttarakhand and Another reported in (2020) 10 SCC 710, wherein 'place in public view' is distinguished from 'public place'. It is

observed that presence of members of the public inside a building or enclosed place could render such place a 'place in public view' due to presence of members of the public. In the present case, the alleged incident had taken place in the premise of Municipal Council during working day. On going through the statements of witnesses it appears that they had witnessed the incident. So, prima-facie it appears that the members of public were present in the premise of Municipal Council at the time of alleged incident. Thus, it can be said that there is material on record which prima-facie establishes that the incident had taken place in the public view.

11. Learned senior counsel for the appellants has also relied on the ratio laid down in the case of Vikas Ambhore Vs State of Maharashtra reported in 2020 DGLS (Bom) 507 and Dilip Dnyaneshwar Ugale and others Vs State of Maharashtra and others reported in 2021 DGLS (Bom) 238. In both the cases cited (supra) this court has held that no prima-facie offence was made out under the provision of Atrocities Act. Therefore, the appellants therein were released on pre-arrest bail. But, in the present case, prosecution has prima-facie made out the offence under Sections 3(1)(r) against the appellant No.1. Therefore, both the cases cited (supra) are not applicable to the facts of the present case.

12. In view of above discussion, as far as the appellant No.1 is concerned it may be said that there is bar to claim pre-arrest bail in the present case under Section 18 of the Atrocities Act.

13. As far as the allegations against the appellant Nos. 2 and 3 are concerned there are no allegations against them that they hurled abuses to respondent No.2 over his caste. It is alleged that they instigated the appellant No.1 to assault respondent No.2 and accordingly appellant No.1 took out a gun and threatened the respondent No.2. Said allegations falls under Section 506 of the IPC. The offence was registered on 10-02-2021. The Investigating Officer has recorded statements of many witnesses. So, it can be said that the investigation is almost completed. Nothing is to be recovered at the instance of the appellant Nos.2 and 3. Therefore, they are entitled to bail in the event of their arrest in the Crime N. 32 of 2021. With this, I hold that the appellant No.1 is not entitled for relief claimed in this appeal. But, the appellant Nos.2 and 3 are entitled for bail in the event of their arrest. Hence, the following order.

ORDER

- i. The appeal is partly allowed.
- ii. In the event of arrest in connection with the Crime No. 32 of 2021 registered with Mudkhed Police Station, Dist. Nanded for the offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, the appellant No. 2- Abdul Salman S/o. Abdul Sattar and appellant No. 3- Shaikh Moinuddin S/o. Shaikh Ismail shall be released on bail on executing personal bond in the sum of Rs. 15,000/- [Rupees Fifteen Thousand] each with one or more sureties in the like amount.

iii. The appellant Nos. 2 and 3 shall not indulge into similar offences and shall not tamper the evidence of prosecution in any manner whatsoever.

iv. The appellant Nos. 2 and 3 shall attend the Mudkhed Police Station, Dist. Nanded on every Monday, Wednesday and Friday within 10.00 am to 12.00 noon for 15 days and co-operate in investigation.

v. The appeal is dismissed against the appellant No.1- Mujeeb Ahmed S/o. Ameeruddin Ansari.

[SURENDRA P. TAVADE, J.]