

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

928 CRIMINAL APPEAL NO. 185 OF 2021

1. Navnath S/o. Maruti Sawant, **...APPELLANTS**
Age-43 years, Occu-Agri & Labour,
2. Nitin S/o. Navnath Sawant,
Age-22 years, Occu-Agri,

All R/o. Yusufwadgaon, Tq. Kaijl,
Dist. Beed

VERSUS

1. The State of Maharashtra, **...RESPONDENTS**
Through Police Inspector
Yusufwadgaon Police Station,
Tq. Kaij, Dist. Beed
2. Shivaji S/o. Baliram Bhalekar,
Age-48 years, Occu-Labour,
R/o. C/o. Suraj Suresh Mukadam,
Gat No. 128, Vithabhatti,
Yusufwadgaon, Tq. Kaij, Dist. Beed

Mr. Hanumant P. Jadhav, Advocate for the appellants
Mr. S. N. Morampalle, APP for the respondent/State
Mr. D. R. Dhumal, Advocate for the respondent No.2

CORAM : SURENDRA P. TAVADE, J.

DATE : 24-09-2021

P. C.

. The appellants have filed the appeal against the order

dated 23-03-2021, passed by the learned Additional Sessions Judge, Ambajogai below Exh.1 in Criminal Bail Application No. 91 of 2021 thereby prayer of pre-arrest bail of the appellants came to be rejected. It is contended that on 27-02-2021 Shivaji filed FIR against the appellants wherein he alleged that on 26-02-2021 at about 4.30 pm wife of appellant No.1 asked the wife and daughter-in-law of informant as to why they thrown garbage in her field. There was quarrel between wife of appellant No.1 and wife of informant. In the same evening at about 09.00 pm to 09.45 pm, the appellants came to the house of the informant alongwith four unknown persons. They quarreled with the informant. The appellant No.2 assaulted the informant by axe and caused injury to finger of left hand. One unknown person assaulted the informant on his shoulder and left leg by stick. The wife of the informant tried to rescue the informant, but she was also assaulted by unknown person and caught her neck. Daughter of informant was also tried to intervene in the matter, but she was also pushed away. Thereafter, son of informant brought the informant, his wife and daughter inside the house and locked the same. It is alleged that the neighbour Datta Kurhade came out of his house, but he was also assaulted by sticks. Thereafter, the appellant No.1 abused the informant over his caste and humiliated him. On the next day morning the informant consulted his employer Suraj Mukadam and filed FIR.

2. On the basis of above allegations learned counsel for

the appellants submits that the alleged incident had taken place in the night in the court yard of the informant. Except the family members of the informant, nobody has witnessed the incident. He also submits that the presence of neighbour Datta Kurhade is shown in the FIR. But, he does not speak about the alleged hurling abuses by the appellant No.1 to the informant and his family members. He also submits that the alleged incident has not been taken place in the public view. Therefore, there is no prima-facie case under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "the Atrocities Act"). Therefore, there is no bar of Section 18-A of the Atrocities Act to consider the present appeal.

3. It is contended that the trial court has not appreciated the averments in the FIR and wrongly rejected the application. He also submits that the case laws were cited before the trial court, but those were not properly considered by the trial court. Therefore, he prays that by allowing the appeal, the appellants be released on bail. Notices of this appeal were issued to the respondents. Respondent No.2 appeared through the Advocate.

4. Heard learned APP for the respondent/State and learned counsel for the respondent No.2.

5. Learned APP submits that incident had occurred in the court yard of the informant. It was witnessed by the independent

witness Datta Kurhade. The appellant No.1 has abused the informant over his caste and humiliated him. Therefore, offences alleged against the appellants under the Atrocities Act are prima-facie made out. Therefore, trial court has rightly dismissed the appeal.

6. Learned counsel for the respondent No.2 has reiterated the submissions of learned APP and submits that the offences are serious in nature. The informant was abused over his caste. Therefore, appeal be dismissed.

7. Perused the FIR, wherein, it is alleged that on 26-02-2021 at about 04.30 pm wife of appellant No.1 quarreled with the wife and daughter of the informant. But, said quarrel was not reported to the police. It is further alleged that, on the same evening at about 09.00 pm to 09.45 pm when the informant and his family members were sleeping in their house, the appellants alongwith 4-5 unknown persons came to the court yard of the informant and started quarreling with the informant. The appellant No.2 assaulted the informant by axe and caused injury to finger of left hand. Similarly one unknown person assaulted the informant on his shoulder and left leg by stick. The wife and daughter of the informant tried to rescue the informant, but they were also assaulted by the unknown person. Thereafter, son of informant brought the informant, his wife and daughter inside the house and locked the same. It is alleged that the neighbour Datta Kurhade

came out of his house, but he was also assaulted by sticks. It is alleged that while leaving the house, the appellant No.1 abused the informant over his caste and humiliated him. Admittedly, the appellants are facing charges under Section 3(1)(r) and 3(1)(s) of the Atrocities Act which runs as under:-

Section 3(1) : Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe;

(r) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) Abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

8. On going through the above provisions the key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" is considered in Swaran Singh & others Vs State Through Standing Counsel & others reported in 2008 (8) SCC 435 the Apex Court had drawn distinction between the expression "Public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the

boundary wall, then the lawn would certainly be a place within the public view. The present incident has occurred in the court yard of the informant. It is not the case of informant that the incident was witnessed by the neighbours. The Investigating Officer has not recorded the statement of witnesses who alleged to have the witness the incident. Similarly, the incident had taken place in the evening of 26-02-2021. Except, Datta Kurhade no one has come on the spot after the incident. He does not say that he heard abuses alleged to have been hurled by the appellant No.1. Therefore, it can be said that offence, did not take place within the public view.

9. Learned APP submits that through the incident was occurred in the evening, it is witnessed by many persons. But, the said fact is not prima-facie established on record. He submits that the provision of Section 438 of the Code of Criminal Procedure should be exercised sparingly in very exceptional cases. He relied on the ration laid down in the case of Prithviraj Chauhan Vs Union of India and others reported in 2020 (4) SCC 727 wherein it is held that :

32. As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in case where no prima-facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.

33. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in every exceptional cases where no prima-facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.

10. On applying the above ratio, it can be said that informant has not alleged that while the incident of assault was in progress, the appellants abused him over his caste. If the FIR carefully read, he alleged that when he closed the door at that point of time, the appellants abused him over his caste. So, the FIR does not show that there was any *mens rea* to humiliate the informant on his caste within public view. Therefore, bar of Section 18 of the Atrocities Act is not applicable to the facts of present case.

11. The trial court has simply considered the allegations made in the FIR. There are no allegations against the appellant No.2 regarding hurling of abuses the informant. So, prima-faice

offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act are not made out against the appellants. The alleged incident had occurred on 26-02-2021. Entire investigation is completed. Custodial interrogation of the appellants is not required. Therefore, on this count also the appeal is required to be allowed. Hence, I pass the following order:

ORDER

- i. The appeal is allowed.
- ii. The order dated 23-03-2021, passed by the learned Additional Sessions Judge, Ambajogai below Exh.1 in Criminal Bail Application No. 91 of 2021 is hereby set aside.
- iii. In the event of arrest in connection with the Crime No. 032/2021 dated 27-02-2021 registered with Yusuf Wadgaon Police Station, Tq. Kaij, Dist. Beed for the offences punishable under Sections 324, 323, 504, 506, 143, 147 and 149 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellants namely (1) Navnath S/o. Maruti Sawant and (2) Nitin S/o. Navnath Sawant shall be released on pre-arrest bail on executing each PR and SB bond in the sum of Rs. 15,000/- [Rupees Fifteen Thousand] each

(9)

criapl185.21

with one or more sureties in the like amount, on following conditions:

(a) The appellants are directed to attend the Yusuf Wadgaon Police Station, Tq. Kaij, Dist. Beed on every day from 29-09-2021 to 13-10-2021 between 10.00 am to 12.00 noon.

(b) The appellants are directed not to tamper with the prosecution witness in any manner.

iv. The criminal appeal stands disposed of.

[SURENDRA P. TAVADE, J.]

VishalK/criapl185.21