

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 214 OF 2021

1. Vilas Ajignath Gaikwad,
Age : 37 Years, Occ. Agriculture,
2. Laxmibai Kailas Gaikwad,
Age : 29 Years, Occ. Houswife,
3. Jyoti Vilas Gaikwad,
Age : 33 Years, Occ. Housewife,
4. Sumanbai Ajinath Gaikwad,
Age : 63 Years, Occ. Housewife,

All resident of Daregaon Tq. Khultabad,
District Aurangabad ...APPELLANTS

Versus

1. The State of Maharashtra,
Through Police Inspector,
Khultabad Police Station,
Tq. & Dist. Aurangabad.
2. Sumanbai Kaduba Bankar,
Age : 36 Years, Occ. Household,
R/o. Daregaon Post Padali,
Tq. Khultabad Dist. Aurangabad. .. RESPONDENTS

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Advocate for the Appellants : Mr. S.S. Kulkarni
A.P.P for Respondent-State : Mr. S. N. Morampalle
Advocate for Respondent No.2 : Mr. R.H. Wagh

CORAM : SURENDRA P. TAVADE, J.

DATE : 01.09.2021

PER COURT :-

By this appeal the appellants are seeking pre-arrest bail in crime No. 68 of 2021 registered with Khultabad Police Station for the offences punishable under Sections 452, 354, 354-B, 506 read with Section 34 of the Indian Penal Code and Sections 8 and 12 of Protection of Children From Sexual Offences Act, and under Section 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(v) and (vg) of Scheduled Castes and the Scheduled Tribes (Preventions of Atrocities) Act. 1989.

2. The facts giving rise to the present appeal can be summarized as under :-

3. The informant Sunitabai W/o Kaduba Bankar lodged FIR on 28th February, 2021 against the appellants with Khultabad Police Station. It is alleged in the F.I.R that in the year 2003, her father-in-law namely, Ramrao Yesu Bankar and Ratan Ranghnath Borde had purchased a plot from the father of appellant No.1 on a bond of Rs. 10/-. Subsequently, in the year 2005, a sale deed came to be executed between Ramrao Bankar and the father of appellant No.1. As per the Indira Awas Scheme, Ramrao has got sanctioned his house over the plot purchased by him from the father of appellant

No.1. The construction of the house of the informant was started, but the appellants used to obstruct the same. Therefore, there used to be frequent quarrels between the appellants and the family of the informant. It is alleged that on 27th February, 2021 at about 1.30 p.m, the informant was in her house. She heard the shouts of her daughter Komal. Hence she rushed towards the room, in which Komal was sitting. Meantime, appellant No.1 came out of the said room. The informant asked him as to why he entered into the room. Over this, appellant No.1 abused the informant over her caste. Thereafter, appellant No.1 ran out of the house of the informant. It is further alleged that the informant saw her daughter crying and top of her Punjabi dress was torn. On enquiry, Komal disclosed to informant that appellant No.1 embarrassed her and torn her top. In the mean time, appellant Nos. 2 to 4 came on the spot, they abused the informant over her caste and also threatened to kill her. In view of the above incident, the First Informant Came to be lodged against the appellants.

4. It is contended that there is land dispute between the family of the informant and the appellants. The appellants had lodged complaint against the informant and her family

members, but police have not taken cognizance of the same and registered it as N.C. It is also contended that appellant No.1 and his brother have filed a civil suit against the informant and her family members in the Court of Khultabad, district Aurangabad and sought injunction against them. It is also contended that appellant No.2 has filed a complaint with the Commissioner of Police, the Superintendent of Police and other authorities, wherein she apprehended that the informant and her family members may implicate her falsely. The said application was submitted on 22nd February, 2021. It is contended that the appellants were apprehending that they would be implicated in a false complaint by the informant or her family members. Accordingly, the First Informant came to be lodged. It is contended that in order to carry out illegal construction over the plot of appellants, a false complaint has been filed against them. It is contended that the trial Court has not considered the chequered history of dispute between the informant and the appellants and wrongly rejected the application for pre-arrest bail. It is contended that the incident had taken place in the house of the informant, which was not witnessed by anybody, therefore, no *prima facie* offence is made out under the

atrocities Act. There is no bar of Section 18 of the Atrocities Act in the present case. Therefore, it is prayed that the appellants may be released on bail.

5. Notice of this appeal was issued to the informant. She appeared through counsel Mr. R. H. Wagh.

6. Heard learned counsel for the appellants and learned A.P.P. assisted by learned counsel on behalf of respondent No.2.

7. Learned A.P.P. submits that there are eye witnesses to the incident, whose statements are recorded by the Investigating Officer. The said eye witnesses have substantiated the contents of the First Information Report. He submits that the Civil Suit came to be filed on 1st March, 2021, whereas, the incident had occurred on 27th February, 2021. Therefore, for giving counter blast to the F.I.R, appellant No.1 file false civil suit. It is contended that the brother-in-law of the informant has also filed atrocity case against appellant No.1, in the year 2018. It is contended that under the Indira Awas Scheme, the revenue authority has permitted the family of the informant to construct the house, but the family of the appellants are obstructing the

construction activity of the informant. It is contended that the family of the appellants was causing harassment to the family of the informant. *Prima facie* case is made out against the appellants, therefore, the appeal be dismissed.

8. Perused the F.I.R wherein, it is specifically alleged by the informant that on the date of incident, at about 1.30 p.m, appellant No.1 entered into her house and outraged the modesty of her daughter. The statement of daughter of the informant is also recorded, wherein, she has substantiated the version given by the informant in the F.I.R. It is also alleged by the informant and her daughter that appellant No.1 abused them over their caste.

9. On the basis of the contents of the FIR. learned counsel for the appellants submits that even if, the allegations made in the FIR are read as it is it does not *prima facie* prove intent or means rea of appellant No.1, to humiliate the informant and her daughter. He also submitted that the incident occurred in the house of the informant, therefore, it was not witnessed by the independent witnesses. Therefore, the alleged incident did not occur in public place and in public view. Therefore, *prima facie* there is no offence is made out

against the appellants under the atrocity Act. On perusal of the investigation papers, it appears that the investigating officer has recorded the statements of independent witnesses who substantiated the version of the informant. Similarly it can be seen that appellant No.1 is facing charge under Section 3(1)(w) 3(2)(v) and (vg) of the Atrocity Act. The provisions of Section 3(1)(w)(i) is as under :-

if person intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

10. There are allegations against the appellant No.1 that he embarrassed daughter of the informant and torn her clothes, whereby, the offence under Section 354, 354-D of the Indian Penal Code are *prima facie* made out. It is the case of the informant that she belongs to scheduled caste, therefore, *prima facie* the offences under Section 3(1)(s), 3(1)(r) 3(1)(w) 3(2)(v) and (vg) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act are made out against appellant No.1. Thus, there is bar of Section 18 of the Scheduled Caste and the Scheduled Tribe (Prevention of

Atrocities) Act to entertain the application of appellant No.1, for pre-arrest bail.

11. The learned counsel for the appellant has relied on the ratio laid down in the case of **Keshav Reddy S/o Ramlu Yeltiwar and others Vs. The State of Maharashtra** dated 3rd December, 2019 wherein, it was held

“The minute scrutiny of factual Score of the prosecution case reveals that prima facie ingredients of penal provisions of the Act of 1989 do not match with the allegation nurtured on behalf of first informant in this case. The basic ingredients of Section 3(1)(r)(s) are that there must be “intentional insult” or “intimidation” with “intent” to humiliate a member of Scheduled Caste and Scheduled Tribe in any place within “public view”. It is to be noted that the mens rea would be the decisive factor in the offence under Act of 1989. In the case of ***Shantabai Vs. State of Maharashtra*** reported in 1982 Cr. L. J. 872, it was held that merely calling a person by his caste name though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person within a public view.”

12. But in the present case, there is sufficient material on record to hold that appellant No.1 outraged the modesty of daughter of the informant, similarly, independent witness has

witnessed the incident, therefore, ratio relied upon is not applicable in the fact of the present case.

13. As far as, the allegations against appellant Nos. 2 to 4 are concerned, the informant stated that they rushed to the spot of incident and abused her, but no specific act or overt act is attributed to appellant Nos. 2 to 4. The allegations are general in nature. The informant tried to establish that appellants No. 2 to 4 hurled abused over her caste and humiliated her, but in absence of specific abuses and the acts and overt acts of appellants Nos. 2 to 4, it cannot be said that appellants No. 2 to 4 had a criminal intention to humiliate the informant and her daughter over their caste. There are no allegations against appellants No. 2 to 4 under Section 3(2) (v) and (vg) of atrocity Act. The other allegations are general in nature, therefore, in my considered opinion, there is no *prima facie* material against appellants No. 2 to 4 involving them for the offences under Sections 3(1)(s),3(1)(r) 3(1)(w) 3(2)(v) and (vg) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act. Therefore, there is no bar of Sections 18 and 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to entertain the present appeal. Hence in my considered opinion

appellant Nos. 2 to 4 are entitled for bail. Hence I pass the following order :-

ORDER

- (i) The appeal is partly allowed.
- (ii) The appeal against appellant No.1 is dismissed.
- (iii) In the event of arrest of the appellant Nos. 2 to 4 in connection with Crime No. 68/2021 registered with Khultabad Police Station, District Aurangabad they shall be released on bail on executing P.R and S.B. in the sum of Rs. 15,000/- (Rupees Fifteen Thousand) each with one or more sureties in the like amount
- (iv) The appellants are also directed to attend the concerned police station from 2nd September, 2021, till 9th September, 2021, between 10:00 a.m. to 12.00 noon every day.
- (v) They are directed not to tamper with the prosecution witnesses, in any manner, whatsoever.

It is made clear that observations made herein above, be construed is expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

**(SURENDRA P. TAVADE)
JUDGE**