

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

CRIMINAL APPEAL NO.241 OF 2021

1. Prayagbai W/o Sakharam Gite,
Age : 70 Years, Occ. Household,
R/o. Soni Moha Tq. Dharur,
Dist. Beed.
(Appeal dismissed against appellant
No.1 as per order dt.6.5.2021.

2. Balaji S/o Sakharam Gite,
Age : 20 Years, Occ. Agricultural
R/o. Soni Moha Tq. Dharur,
Dist. Beed.

..APPLICANTS

VERSUS

1. The State of Maharashtra
Through Police Station,
Dharur, District Beed
2. Vishnu S/o Manik Adagale,
Age : 42 Years, Occ. Agriculture,
R/o. Soni Moha Tq. Dharur,
District Beed.

.. RESPONDENTS

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Advocate for Appellants : Mr. Mahesh P. Kale

APP for Respondent No.1 : Mr. R. B. Bagul

Advocate for Respondent No.2 : Mr. Nayyim S. Shaikh

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**CORAM : SURENDRA P. TAVADE, J.
DATE : 21.09.2021**

PER COURT :-

The appellant is seeking pre-arrest bail in connection
with Crime No. 55 of 2021 registered with Dharur Police

Station, District Beed for the offences punishable under Sections 363, 143, 147, 149, 323, 504 and 506 of the Indian Penal Code and under Section 3(1)(r) 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. The original informant Vishnu Adagale lodged FIR against the appellant and others on 18.03.2021 wherein he alleged that since in the evening of 17.03.2021, accused Rameshwar was lingering near by his house. The Informant had suspicion that Rameshwar might have kidnapped his daughter hence he went to the house of accused Rameshwar where appellant was present along with his father, mother, uncle and other family members. The informant made enquiry about the motor-cycle of father of appellant. The father of the appellant disclosed that accused Rameshwar took daughter of the informant on motor-cycle. It is alleged that the father and mother of the appellant have abused the informant and his mother. It is alleged that in the evening of 17.03.2021 the appellant had also came near the house of the informant and then went away. It is alleged that the appellant and other accused assaulted the informant and his mother and abused them over their caste.

2. On the basis of above said allegations learned counsel

for the appellant submitted that there are no allegation against the appellant that he hurled abuses to the informant or his mother. Similarly, the theory of the informant that all accused including appellant hurled abuses in chorus cannot be accepted. He also submits that the custodial interrogation of the appellant is not required. He also contended that the trial Court has not appreciated the facts of the present case and wrongly rejected the application for pre-arrest bail of the appellant. Hence he prays that the applicant be released on bail.

3. Heard learned A.P.P. He submits that since 17.03.2021 the daughter of the informant is missing. The appellant had conversation with his brother Rameshwar, who is also absconding since 17.03.2021. It is contended that the appellant and co-accused are in connivance with each other and they instigated accused Rameshwar to kidnap the daughter of the informant. It is contended that since last six months, there is no trace of victim girl who is minor, therefore, the custodial interrogation of the appellant is required. The trial Court has rightly considered the allegations made in the FIR and the role attributed to the appellant, therefore, there is no need to interfere with the

order of trial Court.

4. Perused the FIR. There are no specific allegations against the appellant that he had abused informant or his mother over the caste and humiliated them. So it can be said that there was no intent or means-rea to humiliate to informant on his caste within the public view. In view of the ratio laid down in the case of ***Kedarsingh Dharma Patil And Anr. Vs. The State of Maharashtra and Anr. reported in 2019 All MR. (Cri.) 2974*** wherein. it was held that

“If the FIR does not show that there was any intent, means-rea to humiliate on his caste. within the public view, the accused are entitled to pre-arrest bail”.

5. So it can be said that there is no *prima facie* material against the appellant to involve him in the offence alleged against him under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

6. As far as kidnapping of minor victim girl is concerned, it is specific allegations in the FIR that the father of appellant had told the informant that accused Rameshwar took away victim girl on motor-cycle. It is to be noted that since the

date of incident, accused Ramehwar is also absconding. There is no clue to investigating officer as to where accused Rameshwar and victim girl are staying. It is specific allegations against the appellant that he had received the phone call of Rameshwar. So there is possibility that the appellant might be knowing the whereabouts of Rameshwar and the victim girl. Therefore, his interrogation is required to trace out the victim girl. If the FIR is read as it is, it can be said that the appellant has knowledge that Rameshwar has kidnapped the daughter of the informant. Admittedly, daughter of the informant was minor on the day of incident, therefore, the investigation officer is required to arrest accused Rameshwar. As already observed that the appellant had conversation with accused Rameshwar after the incident, therefore, his interrogation is required. Therefore, in my opinion the appellant has not made out case for pre- arrest bail. Hence, I pass the following order

O R D E R

The appeal is dismissed.

**(SURENDRA P. TAVADE)
JUDGE**