

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

CRIMINAL APPEAL NO.268 OF 2021

1. Navnath s/o. Rangnath Malode
2. Gajanan @ Yogesh Asaram Fulare ..Appellants

Vs.

1. The State of Maharashtra
2. Sanjay s/o. Bhagaji Jadhav ..Respondents

Mr.A.K.Bhosle, Advocate for appellants
Mr.K.B.Jadhavar, APP for respondent no.1
Mr.V.I.Thole, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
RESERVED ON : JUNE 29, 2021
PRONOUNCED ON : JULY 06, 2021**

ORDER :-

This is an appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("the Act", for short).

2. The appellants claim to have apprehension of arrest in Crime No.0146 of 2021 registered with Khultabad Police Station, Aurangabad, for the offences punishable under Section 323, 341,

504 and 506 read with Section 34 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Act. They, therefore, had preferred an application under Section 438 of the Code of Criminal Procedure. Learned Addl. Sessions Judge/Special Judge for trial of the offences under the Act, Aurangabad, vide order dated 18.05.2021, rejected the application moved by the appellants for grant of anticipatory bail. Hence, present appeal.

3. Heard.

4. Mr.A.K.Bhosle, learned counsel for the appellants, would submit that false allegations have been levelled against the appellants. Grampanchayat elections took place in the village in the recent past. The panel of the appellants came in power. Since the elections, relations between the informant and some others in the village have been unfriendly and there are counter cases as well. Learned counsel, therefore, urged for grant of pre-arrest bail by allowing the appeal.

5. Learned APP for respondent no.1 and Mr.V.I.Thole, learned counsel for respondent no.2 – informant, would, on the other hand, oppose the appeal. According to learned counsel for respondent no.2, Section 18 of the Act bars grant of pre-arrest bail. Learned counsel read out the allegations in the F.I.R. to ultimately submit that *prima facie* the offence punishable under the Act, has been made out. He, therefore, urged for dismissal of the appeal.

6. The F.I.R. has been lodged by the Police Patil of the village. It is his case that he belongs to Scheduled Caste. On 29.04.2021 by 03.30 p.m., the Circle Officer, Khultabad, had asked him to come to Girjadevi temple, Mhaismal, since panchnama of encroached portion was to be drawn. He had, therefore, been to the site. The Circle Officer and the village Talathi were also present. Both the appellants came there and asked the Circle Officer not to draw any panchnama. They picked up quarrel with the informant. The Circle Officer and

the village Talathi, therefore, went away. The informant also started for his residence. One Satish Meher, Dinesh Bharti and Guljar Behre had accompanied the informant on his way home.

7. It was about 04.30 p.m., they were passing by the house of one Sachin Giri. Both the appellants suddenly appeared from the house of Sachin Giri and blocked the way of the informant and others. Both of them abused the informant over his caste. He (informant) reasoned with them. The informant then went home and informed his wife and sons. The informant's wife and two sons, therefore, went towards the house of Sachin Giri and inquired with the appellants, as to why did they so behave and abused the informant. It was about 05.00 p.m. Both the appellants abused the wife and sons of the informant over their caste and manhandled them as well. The F.I.R., therefore, came to be lodged.

8. True, the allegations in the F.I.R. may, *prima facie*, make out an offence under the Act. There is, however, every possibility of the allegations being false or untrue. In the case

of **Prithvi Raj Chauhan Vs. Union of India and ors., (2020)4**

SCC 727, the Apex Court, in paragraph 2, observed thus :-

2. It is submitted that Section 18-A has been enacted to nullify the judgment of this Court in *Subhash Kashinath Mahajan Vs. State of Maharashtra*, (2018)6 SCC 454, in which the following directions were issued: (SCC p. 513, para 79)

79.

79.1.

79.2. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.
....."

9. Admittedly, there has been Grampanchayat elections a few months before the incident. The informant appears to have belonged to the rival group. There appears to be a counter case i.e. C.R. No.147 of 2021 registered within half an hour of registration of the crime in question. Crime No.147 of 2021 has been registered for the offences punishable under Sections 143, 148, 324, 327, 323, 504, 269, 270 read with Section 149 of Indian Penal Code; Section 135 of Bombay

Police Act, 1951 and Section 51(b) of Disaster Management Act, 2005. Sagar and Aniket, sons of the informant, have been accused along with others in that crime. There is one more Crime, being C.R. No.148 of 2021, registered against four others. Said crime is also alleged to have taken place within hours of the crime in question. As such, all was not well between the appellants on one hand and the informant and others, on the other. It is said that when war breaks out, truth is first casualty.

10. It is alleged in the F.I.R. that both the appellants abused the informant over his caste at 04.30 p.m. and after half an hour, abused the informant's wife and sons with the very words. Both the appellants have been attributed with the said abusive words. Although it is not impossible, it may be difficult for more than one person to abuse another in one voice at the same time. Be that as it may.

11. The facts and circumstances of the case, undoubtedly, indicate that all was not well between the

appellants on one hand and the informant and his family members, on the other. Possibility of making false allegations against the appellants may not be ruled. Offences under Indian Penal Code are bailable one.

12. In the result, I am inclined to allow the appeal. Hence, the following order:-

- (i) The appeal is allowed.
- (ii) The impugned order dated 18.05.2021 passed by learned I/c. Addl. Sessions Judge and Special Judge, S.C. and S.T. (P.O.A.) Act, Aurangabad, in Bail Application No.772 of 2021, is set aside.
- (iii) In the event of arrest, the appellants be released on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount, in connection with Crime No.0146 of 2021 registered with Khultabad Police Station, Dist.Aurangabad, for the offences punishable under Sections 323, 341, 504 and 506 read with

Section 34 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(iv) The appellants shall not tamper with the prosecution evidence;

(v) They shall attend the police station as when required by the Investigating Officer.

[R.G. AVACHAT, J.]

KBP