

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

CRIMINAL APPEAL NO.274 OF 2021

1] Bansi Manohar Shinde

Age 58 years, Occu: Agrilculture,

2] Rohidas Annasaheb Shinde,

Age 30 years, Occu :Agriculture,

[Vide order dated 01/06/2021 appeal
rejected against appellant Nos.1 and 2]

3] Suresh Dagadu Shinde

Age 35 years, Occu :Agriculture,

4] Pradip @ Balu Ramesh Shinde

Age 28 years, Occu :Agriculture,

5] Satish Namdeo Shinde

Age 35 years, Occu :Agriculture,

6] Balasaheb Namdeo Shinde

(Alleged Balasaheb Dnyandeo Shinde named in FIR)

Age 42 years, Occu :Agriculture,

7] Rajebhau Jijasaheb Shinde

Age 42 years, Occu :Agriculture,

8] Vikas Madan Ugale

Age 40 years, Occu :Agriculture,

9] Prakash Madan Ugale

[Alleged Balasaheb Madan Ugale named in FIR]

Age 30 years, Occu :Agriculture,

10] Vishnu Sarjerao Shinde
Age 32 years, Occu :Agriculture,

11] Vaibhav Bandu Shinde
Age 25 years, Occu :Agriculture,

12] Shankar Bhaskar Shinde
Age 22 years, Occu :Agriculture,

13] Balasaheb Baburao Taur
(Alleged Balasaheb Taur Tailor named in FIR)
Age 33 years, Occu :Agriculture,

14] Datta Amrut Shinde
Age 42 years, Occu :Agriculture,

15] Datta Bansidhar Shinde
Age 36 years, Occu :Agriculture,

16] Devidas Vitthal Shinde
Age 33 years, Occu :Agriculture,

17] Santosh Baburao Shinde
Age 35 years, Occu :Agriculture,

18] Anant Vishwanath Shinde
(Alleged Anand Vishwanath Shinde named in FIR)
Age 23 years, Occu :Agriculture,

19] Mokind Rambhau Shinde
Age 28 years, Occu :Agriculture,

All are R/o Shripat Dhamangaon,
Tq.Ghansawangi,Dist.Jalna.

.. APPELLANTS

[Orig.Accused nos.1 to 19 as shown
in FIR]

.....

VERSUS

1] The State of Maharashtra
Through Police Station,
Ghansawangi, Jalna, Dist.Jalna.

2] Milind Dinkar Wahule
Age 30 years, Occu : Student,
R/o Shripat Dhamangaon,
Tq.Ghansawangi,Dist.Jalna.

.. Respondents

....

Adv.Mr. S.J.Salunke for appellants
A.P.P. Mr.R.B.Bagul for respondent no.1.
Adv. A.S.Wakode for Respondent no.2.

....

CORAM : MANGESH S. PATIL
DATE : 27/07/2021

ORAL JUDGMENT :

Heard.

2] Admit. With the consent of both the sides, the matter is heard finally at the stage of admission.

3] This is an appeal under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as Atrocities Act) as amended in the year 2015 being aggrieved and dissatisfied by rejection of application for anticipatory bail under Section 438 of the Cr.PC. preferred by the appellants in connection with Crime No.130/2021 registered with Ghansawangi Police Station, Dist.Jalna for the offences punishable under Sections 120-B, 504, 506 of the I.P.C. and Sections 3(1)(r), 3(1)(s), 3(1)(zc) of the Atrocities Act.

4] It is being alleged that appellant no.2 Rohidas desecrate the flag of the Scheduled Caste community regarding which an offence was registered against him being Crime No.109/2021 for the offences punishable under Sections 295 and 427 of the I.P.C. and Sections 3(1)(r), 3(1)(s) and 3(1)(t) of the Atrocities Act. Since after his release on bail in that crime and with a view to mobilize the community so as to socially boycott the villagers from Scheduled Castes and Scheduled Tribes community a meeting was arranged. The appellant nos.1 and 2 hurled abuses in the meeting on caste lines and appealed to the villagers present there to socially boycott the persons belonging to the Mahar community. The informant who was incidentally passing by could hear the deliberations that were taking place in the meeting clandestinely and then informed it to Vidyasagar Dattabhau Wahule who also belongs to Mahar community. It is then alleged that in order to verify the fact of social boycott, he asked his son Abhijit and one Sangam to fetch some grocery from the grocery shops of the village, however, shop owners viz. one Sumanbai, Vitthal and Parmeshwar refused to sell groundnuts under the pretext that there was no stock. It is then alleged that even Vidyasagar himself went to the ration shop of Rameshwar Radhakisan Shinde, where the appellant no.19 refused to deliver ration under the pretext of his suffering from some allergy but later on was seen delivering ration to other villagers. The matter was reported to police and the offence was registered.

5] The appellants applied for anticipatory bail but by the impugned order the learned Special Judge refused to grant them bail. Hence this Appeal.

6] It is necessary to note that the appeal to the extent of appellant nos.1 and 2 has been dismissed by the order dated 1/6/2021, whereas the rest of the appellants have been granted ad-interim anticipatory bail.

7] The learned advocate for the appellants would submit that accepting the allegations at their face value, as far as hurling of abuses on caste lines being offences punishable under Sections 3(1)(r) and 3(1)(s), the informant had not participated in the meeting but had seen the proceeding clandestinely. Therefore, there is no question of any insult or annoyance being caused to him in that meeting or hurling of abuses at him on caste lines. In support of his such submission he would place reliance on the decisions of (1) Asmathunnisa Versus State of A.P.; 2011 AIR SCW 2285 and (2) Mohanbhai Delkar Versus Lalit Babu Patel and others; 2013 All M.R.(Cri) 4354.

8] The learned advocate Mr.Salunke would then submit that though there are allegations about the appellant nos.1 and 2 having appealed to the rest of the appellants to socially boycott the persons from Mahar community, no such allegations can be found against the appellant nos.3 to 19. Mere participation in such meeting where the appellant nos.1 and 2 had made the appeal *prima facie* would not constitute an offence punishable under Section 3(1)(zc) of the Atrocities Act as against rest of the appellants. He would therefore submit that in view of the decisions in the case of Prathviraj Chauhan V/s Union of India and others; (2020) 4 S.C.C. 727, the bar under Sections 18 and 18-A of the Atrocities Act would not be attracted since *prima facie* the offence under the Atrocities Act cannot be made out against the appellant nos.3 to 19.

9] The learned A.P.P. would submit that at this stage there is enough material to reveal involvement of all the appellants in commission of the crime under the Atrocities Act. He would point out that going by the F.I.R. the appellants Suresh Dagdu Shinde and Balasaheb Shinde alongwith appellant no.2 Rohidas had specifically uttered in the meeting and appealed to the persons present to socially boycott the persons from Mahar

community. He would further submit that pursuant to such appeal the conduct of the appellant no.19 Mokind is conspicuous. He had refused to deliver goods being an employee at a ration shop of Rameshwar under the pretext of some allergy, however, he continued to oblige other customers. By his such conduct pursuant to the appeal made by the appellant nos.1 and 2 at the meeting is sufficient to draw inference at this stage that all these appellants had hatched a conspiracy to socially boycott the persons of Scheduled Caste community which is sufficient to disclose commission of crime under Section 3(1)(zc).

10] The learned advocate for the respondent no.2 original informant submits that the very conduct of all the appellants is eloquent. There was a strong motive for the appellant no.2 pursuant to which he had mobilized these persons for the meeting wherein they appealed for a social boycott. Subsequent conduct of these appellants is also relevant and at this juncture the bar under Sections 18 and 18-A of the Atrocities Act gets attracted.

11] I have carefully considered the rival submissions and perused the papers of the investigation. As far as the offences punishable under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act are concerned, even according to the informant he was not personally present in the meeting as an attendee but could overhear the proceeding clandestinely while passing by. Pertinently he does not specifically allege that his presence round the corner was noticed by any of the appellants. Going by the wordings of these Sections 3(1)(r) and 3(1)(s) it is highly imperative that the hurling of abuses should be with an intention to cause insult and annoyance to a person belonging to Scheduled Caste or Scheduled Tribe. If these appellants were oblivious to the fact of his being in the vicinity there *prima facie* won't be any question of insult, assuming that the abuses were hurled on caste lines. Suffice for the purpose to rely upon the observations and the

conclusions in the case of Asmathunnisa and Mohanbhai (supra).

12] As far as offence punishable under Sections 3(1)(zc) regarding social boycott is concerned, true it is that the appellant nos.1 and 2 seem to have tried to instigate the villagers i.e. the rest of the appellant nos. 2 to 18 to socially boycott the persons belonging to a specific community. There is also sufficient material to reveal that they had strong motive to do that in as much as the appellant no.2 was already involved in a crime under the Atrocities Act and was harboring some grudge against the specific community.

13] However, simultaneously mere allegations about the appellant nos.1 and 2 having made some appeal in that meeting would not be sufficient to attract the offence under Section 3(1)(zc) of the Atrocities Act as far as the other appellants are concerned. If one refers to the papers of the investigation, there is not a single witness who would allege about these other appellant nos.2 to 18 having acted in unison pursuant to the conspiracy hatched and have conducted themselves in a manner which would constitute social boycott within the meaning of Section 3(1)(zc) of Atrocities Act which reads thus :

“Section 3.Punishments for offences of atrocities : (1)
Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe : (zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

14] True it is that in the F.I.R. some allegations have been levelled against the appellants Suresh and Vishnu about even they having made some appeal

to the gathering to socially boycott persons from that community. But then, mere intention, without there being any attempt to accomplish the crime, would not be punishable.

15] There are allegations against appellant no.19 Mokinda who was in the employment of witness Rameshwar regarding refusal to deliver goods to witness Vidyasagar. However, Rameshwsar himself in his statement does not state about there being any specific intention on the part of appellant no.19 Mokinda not to deliver the goods. Importantly, even he does not state that behaviour of Mokinda was in tune with any appeal that was made in the meeting to resort to social boycott. Interestingly Mokinda himself having been made an accused, there is no material to *prima facie* show that he had acted in the manner alleged because of any appeal made in that meeting.

16] Apart from the above state of affairs, as can be seen from the statements of Vidyasagar Wahule as also the other shop owners, Vidyasagar could get the grocery from the very shop from some other employee other than the appellant no.19 Mokinda. If such is the state of affairs, *prima facie* it cannot be said that the matter reveals commission of a crime under Section 3(1)(zc) of the Atrocities Act.

17] Apart from the above state of affairs, admittedly the appellant nos.3 to 19 have been enjoying ad-interim anticipatory bail pursuant to the order dated 1/6/2021. There are no allegations about they having committed breach of any of the terms and conditions subject to which the relief was granted to them.

18] Taking into account all the aforementioned facts and circumstances, in my considered view, the bar under Sections 18 and 18-A of the Atrocities

Act would not come into play and the appellants are entitled to confirmation of the ad-interim relief.

19] The Appeal is allowed. The impugned order is quashed and set aside. The ad-interim relief granted by order dated 1/6/2021 stands confirmed with the same terms and conditions.

(MANGESH S. PATIL, J.)

umg