

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

CRIMINAL APPEAL NO. 310 OF 2021

1. Dnyandev Annasaheb Muley .. Appellants
Age. __ years, Occ. Agriculture,
R/o. Apegaon, Tq. Paithan,
Dist. Aurangabad.
2. Sopan Nanasaheb Mhaske
Age. __ years, Occ. Agriculture,
R/o. Akhatwada, Tq. Paithan,
Dist. Aurangabad.
3. Janardhan Bapu Girje
Age. 95 years, Occ. Agriculture,
R/o. Apegaon, Tq. Paithan,
Dist. Aurangabad.

VERSUS

1. State of Maharashtra .. Respondents
Through Police Station, Paithan,
Aurangabad.
2. Babasaheb Laxman Dahihande
Age. 42 years, Occ. Agriculture,
R/o. Katpur, Paithan,
Dist. Aurangabad.

Mr. J. V. Deshpande and Mr. S. N. Dudhate, Advocates for the appellants.

Mr. R. B. Bagul, APP for the respondent/State.

Mr. G. A. Kulkarni, Advocate for respondent No. 2.

CORAM : SURENDRA P. TAVADE, J.

DATED : 27.09.2021

PC :-

01. The appellants are challenging the order passed by the Special Judge under the SC ST (POA) Act, Aurangabad, in Bail Application No.946 of 2021 dated 17.06.2021, whereby the Trial Court has rejected the application of appellants for pre-arrest bail.

02. Facts giving rise to the present appeal can be summarized as under :-

03. The appellants are prosecuted by respondent No.2 for the offences punishable under sections 324, 323, 504, 506 r/w 34 of the Indian Penal Code and under sections 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The FIR was lodged by Babasaheb Dahihande on 18.05.2021. It is alleged in the FIR that the informant (R-2) is having land block No.268 at village Akhatwada. He had filed civil suit against the appellants in respect of said land, wherein the Civil Court has issued injunction against the appellants. It is alleged that on 18.05.2021 at about 04.00 p.m. the appellants entered into field of respondent No.2 and they started assaulting respondent No.2. It is alleged that appellant No.1 assaulted respondent No.2 by iron rod. One Bhagwat Mhaske assaulted brother of respondent No.1 by stick. Appellant Nos.2 and

3 abused the informant and witnesses and assaulted them by fist and kick blows. It is also alleged that the appellants threatened to kill respondent No.2 and witnesses. They alleged that respondent No.2 sustained head injury. He was taken to hospital and thereafter he lodged FIR against the appellants and others. It is contended that there are no allegations of hurling of abuses by appellants over the caste to respondent No.2 But it is alleged that the appellants entered into field of respondent No.2 and assaulted him. Therefore, offence under section 3(2) (va) of the Atrocities Act is alleged against the appellants.

04. It is contended that the appellants were returning from sugar factory. On the way their car was stopped by son of respondent No.2. Thereafter the appellants were assaulted mercilessly. Appellant No.1 sustained grievous injury. He was admitted in the hospital. Respondent No.2 and his family members were arrested by police and subsequently they were released on bail. It is contended that the appellants also filed private complaint against respondent No.2 and others, which is pending. The appellants are also contesting civil suit filed by respondent No.2. It is contended that respondent No.2 has relied on false document. Said document was sent for report of CA and it is also

contended that the report is received wherein it was held that there was manipulation in the document. It is contended that the appellant No.3 has also filed criminal complaint against respondent No.2 in the year 2019. It is stated that the parties are having civil litigation. Respondent No.2 has taken dis-advantage of said dispute and filed false and bogus complaint under the Atrocities Act. It is contended that the Trial Court has not considered the dispute between the parties and wrongly rejected the application of the appellants for pre-arrest bail. Said order may be set aside.

05. Learned APP appeared on behalf of the State. He submits that the above appellants were aware of the caste of respondent No.2. They came into field of respondent No.2 and assaulted him. Therefore, offence under sections 3(2) (va) is prima facie made out against the appellants. Therefore, there is no need to interfere with the order of the Trial Court.

06. Heard learned Counsel for respondent No.2. He also submits that offence under section 3(1)(g) of the Atrocities Act is also made out. He submits that the appellant tried to dispossess respondent No.2 from the land. He also submits that inspite of injunction, the appellants entered into field of respondent No.2 and

assaulted him and his family members. Therefore, the Trial Court has rightly appreciated the facts of the case and rejected the application. There is no need to interfere with the impugned order.

07. Heard learned Counsel for the appellants, learned APP for the respondent/State and learned Counsel for respondent No.2.

08. Admittedly, there are no allegations in the FIR that the appellants had hurled abuses to respondent No.2 and/or his family members over caste. There are no allegations that the appellants had humiliated respondent No.2 over his caste.

09. Admittedly, respondent No.2 has filed civil suit bearing RCS No.89 of 2019, wherein he had submitted application for interim injunction (Exh.5), which was allowed on 11.07.2019. It is alleged by respondent No.2 that the appellants entered into his land block No.268 situated at village Akhatwada and assaulted him and his brother. On the other hand, appellant No.1 has also lodged FIR against respondent No.2 and three others in respect of the incident of assault. It appears that the date and time of incident is the same in both the FIRs. In FIR lodged by respondent No.2, the place of incident

is shown as land block No.268; whereas in the FIR lodged by appellant No.1 the place of incident is on road. The police have taken complaint of rival parties, but it appears that the incident is one and the same. Respondent No.2 was prosecuted for the offences punishable under section 307 of the IPC, whereas the appellants are prosecuted for the offences punishable under sections 324, 323, 504, 506 r/w 34 of the IPC and under section 3(2)(va) of the Atrocities Act. The appellants and respondent No.2 and others were injured in the incident. Therefore, on the basis of the said fact, learned Counsel for the appellants submits that there were civil disputes between the parties, but the Investigating Officer has invoked provisions of the Atrocities Act. He submits that there are no allegations against the appellants that due to caste of respondent No.2 he has been harassed by the appellants. He submits that the dispute is going on between the parties since 2019. There are no allegations against the appellants that since 2019, they were causing harassment to respondent No.2 over his caste. He further submits that there is dispute about possession of land or title of the land. In absence of casteist abuses, provisions of the Atrocities Act cannot be invoked. To substantiate this, he relied on the judgment of the Supreme Court in the case of Hitesh Verma Vs. State of Uttarakhand & Anr,

Criminal Appeal No.707 of 2020, wherein the Apex Court has held that :-

"There is dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe."

10. In the present case there are no allegations against the appellants that they abused or harassed respondent No.2 over his caste. Therefore, in view of ratio laid down, it can be said that if the matter is regarding property pending before the Civil Court, the dispute is arising out of said property would not disclose offence under the Atrocities Act, unless the victim is abused, intimidated or harassed only for the reason that he belongs to Scheduled Caste or Scheduled Tribe. Therefore, I have already observed that the parties have lodged case and cross-case against each other for the incident occurred on 18.05.2021. The offence registered against respondent No.2 is more serious in nature. He was arrested and subsequently released on bail. But the fact remains on record that said incident had occurred as per the FIR lodged by

appellant No.1. In view of the matter, it can be said that prima facie no offence under the Atrocities Act is made out. Therefore, the appellants are entitled for pre-arrest bail. Hence, I pass following order :-

O R D E R

(i) The appeal is allowed. The impugned order passed by the Sessions Court is set aside.

(ii) In the event of arrest of the appellants in connection with Crime No.163 of 2021, registered with Paithan Police Station, Tq. Paithan, Dist. Aurangabad, for the offences punishable under sections 324, 323, 504, 506 r/w 34 of the Indian Penal Code and under section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants be released on bail on executing PR and SB in the sum of Rs.15,000/- [Rupees Fifteen Thousand] with one or more sureties in the like amount.

(iii) The appellants are directed to attend the concerned police station everyday between 11.00 a.m. to 01.00 p.m. from 29.09.2021 to

17.10.2021. The appellants are directed not to tamper with the prosecution witnesses, in any manner, whatsoever.

(iv) Learned Counsel Mr. Govind A. Kulkarni was appointed by the High Court Legal Services Sub-Committee, Aurangabad for espousing cause of respondent No.2. His professional fees quantified at Rs.2500/- (Rupees Two Thousand Five Hundred) be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[SURENDRA P. TAVADE,J.]