

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

927 CRIMINAL APPEAL NO.319 OF 2021

1. Ramesh s/o Gulab Chavan,
Age; 43 years, Occ; Agriculture,
R/o; Chidgiri, Tq. Bhokar, Dist; Nanded.

2. Vijay s/o Gulab Chavan,
Age; 43 years, Occ; Agriculture,
R/o; Chidgiri, Tq. Bhokar,
District; Nanded.

...APPELLANTS

VERSUS

1. The State of Maharashtra,
Through Bhokar Police Station,
Tq. Bhokar, District; Nanded.

2. Saheb Narayan Waghmare,
Age; 42 years, Occ; Agriculture,
R/o; Chidgiri, Bhokar, Tq. Bhokar,
District; Nanded.

...RESPONDENTS

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Advocate for Appellants : Mr. A.S. Jadhav h/f Mr. P.R.
Katneshwarkar

APP for Respondent No. 1-State : Mrs. R.P. Gaur

Advocate for Respondent No. 2 : Mr. Ashish B. Shinde

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CORAM : SURENDRA P.TAVADE , J.

DATE : 13th August, 2021.

ORDER :

1. The original accused/appellants in Crime No. 81 of 2021
registered at Bhokar Police Station, District Nanded for the offences

punishable under Sections 504 and 506 read with Section 34 of the Indian Penal Code (for short “IPC”) and under Section 3 (1) (r) and 3 (1) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short the “Atrocities Act”) have challenged the order passed by the Additional Sessions Judge, Bhokar, District; Nanded in Misc. Criminal Application No. 54 of 2021.

2. The informant lodged FIR against the appellants alleging that the appellants came to his house and abused him over his caste and humiliated him. On the basis of the complaint, Crime No. 81 of 2021 was registered against the appellants with Bhokar Police Station, District Nanded. The appellants submitted an application No. 54 of 2021 for pre-arrest bail, which was rejected on the ground that prima-facie case is made out against the appellants under the Atrocities Act, therefore, the provisions under Section 18 and 18-A of the Atrocities Act are applicable and hence the application came to be rejected.

3. It is submitted by the learned counsel for the appellants that on bare reading of the First Information Report (for short “FIR”), prima-facie, offence is not made out against the appellants. It is submitted that the alleged offence was committed in the house of the informant. Nobody has witnessed the same, therefore, it cannot be said that an offence was committed in public place in public view,

therefore, the provisions of Section 3 (1) (r) and 3 (1) (s) of the Atrocities Act, are not attracted. Thus, the case is not made out under said provisions, therefore, the appellants are entitled for bail.

4. On the other hand, the learned APP for the respondent-State submits that the incident had taken place in the courtyard of the house of the informant and the said incident was witnessed by the neighbours, therefore, the incident had occurred in the public place in public view, therefore, there is sufficient material to hold that the offence is prima-facie made out against the appellants. He also submitted that the Trial Court has rightly rejected the application of the appellants. He further submitted that the informant had lodged the FIR against the appellants and on the basis of which, crime was registered against them for misappropriation of funds. The appellants are also involved in the other offence registered with police. So they have criminal antecedents, therefore, they may not be released on pre-arrest bail.

5. Heard Mr. A.S. Jadhav h/f Mr. P.R. Katneshwarkar. for the appellants, Mrs. R.P. Gaur, learned APP for Respondent No. 1-State and Mr. Ashish B. Shinde, learned Counsel for Respondent No. 2.

6. It is to be noted that as per the ratio laid down in the

case of **Hitesh Varma Vs. State of Uttarakhand and Another** reported in (2020) 10 Supreme Court Cases 710 the Apex Court held that

“The powers of Court enshrined under Section 438 of the Code of Criminal Procedure, for granting anticipatory bail can be exercised even in cases covered by the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989.”

7. In the light of the above ratio, one has to see the provisions of Section 3 (1) (r) and 3 (1) (s) of the Atrocities Act. If both the provisions are taken into account, it can be seen that the alleged offence shall occurred or happened at the public place and in public view. Learned counsel for the appellants submits that the alleged incident occurred in the house or in the courtyard of the house of the informant herein. It is further submitted that, even if it is presumed that the incident had occurred, still it does not come within the purview of Section 3 (1) (r) and 3 (1) (s) of the Atrocities Act. To appreciate the contentions raised by the learned counsel for the appellants, one has to read the FIR. The FIR came to be lodged on 01st March, 2021. It is alleged by the informant that on 01.03.2021 at about 10.00 a.m. the appellants came to his house and told him that inspite of lodging FIR, nothing has happened to them. He further alleges that the appellants abused him over his caste by saying that “तुमच्या मांग महारांनी आमचे काही वाकडे झाले नाही व वाकडे

होणार नाही व तु एकटाच का सर्व मांग महार आले तरी आमचे काही वाकडे होणार नाही". He further alleges that said abuses humiliated him, therefore, he lodged the FIR. It appears that the incident had taken place either in the courtyard or inside the house. It is mentioned in the FIR that Shriniwas Chavan was present at the time of incident. So it was incumbent on the Investigating Officer to record the statement of said Shriniwas Chavan, but surprisingly, he has not recorded the statement of Shriniwas Chavan for the reasons best known to the investigating officer. So, at present, it cannot be said that Shriniwas Chavan was really present on the spot to witness the incident.

8. The learned APP for the respondent-State submitted that the incident had occurred in the courtyard of the house of the informant. He invited my attention to the scene of offence panchanama. The scene of offence was shown by the informant to police, which is the courtyard of his house. So, it can be said that the said place was visible from adjacent houses. The investigating officer has recorded the statements of two neighbours of informant namely Ram Radhakishan Kamble and Devidas Narayan Waghmare. Both of them stated that they came to know about the incident from their family members. Both of them were not present in their house at the time of incident. Therefore, their statements are not useful to prima-facie establish the occurrence of incident in the public view. It

was expected from the investigating officer to record the statements of family members of those two persons, who alleged to have witnessed the incident, but no pain was taken by the investigating officer to that effect. So prima-facie it appears from the investigation that except the informant, nobody had witnessed the incident. So, it cannot be said that the incident had occurred in the public place in public view.

9. On this point the learned counsel for the appellants has relied on the ratio in the case of **Hitesh Varma (Supra)**, it is held that

“Intentional insult/intimidation with intent to humiliate member of SC/ST in any place within public view---Ingredients of, summarised --- “Place in public view” distinguished from “public place” --- Clarified also that presence of members of the public inside a building or enclosed space could render such place a “place in public view” due to presence of members of the public.”

In the present case, on perusal of the FIR, it appears, incident had taken place in the house or in the courtyard of the house of the informant. Though, it was stated that it was witnessed by one Shriniwas Chavan, but his statement was not recorded. There is no other material on record to establish that the alleged abuses hurled in public place in public view. There seems to be nothing, except bare words of the informant, no material is placed on record to

establish that the incident was taken place on public place in public view, to humiliate the informant over his caste.

10. On the other hand, the learned counsel for the informant has relied on the ratio laid down in **Prathvi Raj Chauhan Vs. Union of India (UOI) and Ors. Reported in AIR 2020 SC 1036**, it is held that

“32. As far as the provision of Section 18-A and anticipatory bail is concerned, the judgment of Mishra, J, has stated that in cases where no prima facie materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail.

33. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that unde Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.”

The ratio laid down in the case of **Prathvi Raj Chauhan (Supra)** was followed in the case of **Hitesh Varma (Supra)**. The

powers of this Court under Section 438 of the Code of Criminal Procedure for grant of pre-arrest bail can be exercised even in cases covered under the Atrocities Act. So the law is well settled that if no prima-facie offence is made out, then the Court can exercise discretion and powers to grant pre-arrest bail. In the present case, except the FIR, nothing is on record to establish that the alleged incident had taken place in the public place in public view, therefore, the ratio laid down in the case of **Hitesh Varma (Supra)**, is applicable to the facts of the case. In view of the matter, I am of the opinion that the appellants are entitled to pre-arrest bail. The trial Court has not considered the contents of the FIR, in the light of the ratio laid down in the **Hitesh Varma (Supra)**, and **Prathvi Raj Chauhan (Supra)** case. Therefore, the said order of the trial Court is required to be set aside. Hence I pass following order :

ORDER

- i) Appeal is allowed.
- ii) In the event of arrest, the appellants No.1.Ramesh s/o Gulab Chavan and 2.Vijay s/o Gulab Chavan, be released on bail on their executing each PR and S.B. bond of Rs. 15,000/- (Rs. Fifteen Thousand) each on following conditions :
 - a) The appellants are directed to attend the Police Station Bhokar, on every day, from 10.00 a.m. to 1.00 p.m., till 01st September, 2021.

b) The appellants are directed not to tamper with the prosecution witnesses in any manner.

iii) Appeal is disposed of.

(SURENDRA P.TAVADE)
JUDGE

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