

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

929 CRIMINAL APPEAL NO. 342 OF 2021

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| 1. Samadhan S/o. Rajaram Mali,
Age-32 years, Occu-Agri, | ...APPELLANTS
[Ori. Accused] |
| 2. Rajaram S/o. Hasrat Mali,
Age-62 years, Occu-Agri, | |
| 3. Dinesh S/o. Namdev Mali,
Age-26 years, Occu-Agri & Social Work,
All R/o. At Post Ajang,
Tq. & Dist. Dhule | |

VERSUS

- | | |
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| 1. The State of Maharashtra | ...RESPONDENTS |
| 2. Kishor Pitambar Ahire,
Age-38 years, Occu-Labour,
R/o. At Post Ajang,
Tq. & Dist. Dhule | |

Mr. Amit S. Savale, Advocate for the appellants
 Mrs. G. L. Deshpande, APP for the respondent/State
 Mr. S. R. Andhave, Advocate for the respondent No.2

CORAM : SURENDRA P. TAVADE, J.

DATE : 24-09-2021

P. C.

. Being aggrieved and dissatisfied with the order dated 01-07-2021 passed below Exh. 1 in Criminal Bail Application No. 504 of 2021, by learned Special Judge, Dhule whereby the prayer of

pre-arrest bail of appellants came to be rejected, the appellants preferred this appeal.

2. One Kishor Ahire on 31-05-2021 lodged the FIR with Dhule Taluka Police Station, Dhule wherein he alleged that he belongs to scheduled caste community. He knows the appellants as they are resident of his village. The appellants undertakes work of digging well. The grand-mother of informant is having land bearing Block No. 288, at village Ajang, Dhule. The government has sanctioned well in the said land. Hence, the informant approached the applicant and gave contract of digging well in the land bearing Block No. 288 for Rs. 1,91,000/-. It is alleged that the appellant No.1 and 2 started working of digging well in the month of March, 2019. They continued the work till June, 2019. But, thereafter they stopped the work due to rainy reason. Thereafter, due to covid-19 pandemic, work was stopped. In the month of September, 2021, the informant contacted the appellant Nos. 1 and 2 and had requested to complete the work of well. The appellant No. 1 assured the informant that they would start the work within fifteen days. But, no work was carried out even after six months. It is alleged that at about 08.00 to 08.30 am while informant was proceeding towards his old house, on Sant Rohidas Chowk he met the appellant No.1 and asked him, when he would complete the work of digging well. Over this, the appellant No.1 got angry. He caught hold of collar and shirt and abused him. Father and brother of the appellant Nos.1 came on the spot. They started assaulting

the informant by kicks and fists. Meantime, the villagers Shriram Mali, Umesh Mali, Raghunath Kedar, Chetan Gaikwad came to the rescue of the informant. During the quarrel, the appellants hurled abuses to the informant over his caste and humiliated him. Hence, he came to the police station and lodged the report. On the basis of the same, crime bearing No. 327/2021 came to be registered against the appellants for the offences punishable under Sections 323, 504, 506, read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC') and Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (hereinafter referred to as 'the Atrocities Act').

3. On the basis of allegations made in the FIR, the learned counsel for the appellants submits that the informant is in habit of filing false complaint against the villagers to extract the money. He also submits that he had filed the complaint at the instance of Dinesh Mali (Appellant No.3). The appellants have produced on record the documents. First document is; copy of FIR filed by the mother of informant on 30-03-2012 against the Rohidas Patil and others, Second document is; copy of FIR filed by mother of informant on 12-01-2015 against the Shankar Mali and others, third document is; copy of FIR dated 12-05-2016 filed by the informant against the Dilip Patil and others. All these FIR are under the provision of Atrocities Act. The learned counsel for the appellants has also placed the reliance on the judgment delivered in the case of Special Case No. 107 of 1996. The special case was

initiated at the instance of the informant against the Adhikar Patil and Sanjay Patil for the offence under the Atrocities Act. In the said case the accused were acquitted by the Special Court wherein it was observed that merely saying 'Chamte Far Majle' that cannot be said to be the insult of the caste of the complainant. Only on this point the accused cannot be held responsible for the said offence. So, it can be said that since 1996 the informant has been filing the complaint against the persons under the Atrocities Act.

4. Learned counsel for the appellants submits that the informant is also facing the criminal case under Sections 394, 341, 323, 504, 506, 427 of the Indian Penal Code. The said fact is not denied by the respondents. Learned counsel for the appellants submits that the informant had given the application against the Sagar Patil and Dinesh Mali (appellant No.3) on 26-04-2019 wherein it was alleged that Sagar and Dinesh were running Matka Den. The said application was investigated by the Dhule Taluka Police Station. The PIS, Dhule Taluka Police Station issued a letter dated 04-05-2019 to the Superintendent of Police, Dhule wherein it is informed to the Superintendent of Police that the informant is facing crime bearing No. 140 of 2016 registered with Dhule Taluka Police Station, Dhule. The informant files application to create tension amongst the rival communities. It is also mentioned that there was no prima-facie material in the application, therefore, PSI requested to file the same. Accordingly, the said application was filed.

5. Learned counsel for the appellants also produced on record the application of the informant addressed to the Superintendent of Police wherein, he alleged that Sanjay Mali humiliated him over his caste. Enquiry was carried out in pursuance of the said application. In the said enquiry the statement of the informant was recorded by the Police on 16-05-2019 wherein he disclosed that he has dispute with the non-applicants and with the help of reputed persons in the village Dinesh Babulal Mali, Mahesh Motilal Mali, Dagadu Vithoba Mali settled the dispute with non-applicant. Therefore, he withdrew his application dated 06-06-2019.

6. Learned counsel for the appellants has also produced on record the copy of statement of the informant recorded by the PSI, Dhule Taluka Police Station dated 16-05-2019 wherein it was mentioned that he had no knowledge about the running of Matka Den by Sagar and Dinesh. He gave the application without confirmation of fact running the Matka Den by Sagar and Dinesh. So, it can be said that the informant withdrew his complaint dated 26-04-2019. Hence, it was filed. So, it can be said that the informant was making allegations against the appellant No.3 since 2019 that he runs Matka Den without any material. Learned counsel for the appellants submits that the appellants have also produced on record the statement of the informant dated 13-10-2018 recorded by the PSI, Dhule Taluka Police Station, Dhule. It appears that the informant has filed the application against the Dinesh

Addressed to Dhule Taluka Police Station, wherein he alleged that since prior to 17-10-2018 Dinesh Babulal Mali (Sonwane) @ Dinesh Doctor was pressuring him to lodge the complaint against the some persons with whom he had grudge. It is also alleged that the said Dinesh Mali used to file false applications in his name. The informant also alleged that said Dinesh used to file false application in his name. It is also alleged that he had taken loan from Dinesh which is outstanding. Therefore, Dinesh used to pressurize him to file false complaint against many persons. Said statement was recorded by the Police on 13-10-2018. It is pertinent to note that in the present case also Dinesh is cited as witness by the informant. On one hand the informant had alleged that Dinesh was pressurizing him to file false complaint with whom he has dispute. Still, he cited as witness in the present case to show that the informant had paid money to the appellants.

7. The learned counsel for the appellants has produced on record the report submitted by the PSI, Dhule Taluka Police Station, Dhule to Superintendent of Police, Dhule on 04-05-2019 wherein it is mentioned that the informant and Dinesh had filed complaint before the JMFC, Dhule against the Sunanda, Ajgar, Kantabai, Nandu. Said complaint was referred to the Dhule Taluka Police Station, Dhule for enquiry under Section 202 of the Code of Criminal Procedure. On enquiry Dhule Taluka Police Station, Dhule police submitted report to the learned JMFC, Dhule wherein it was disclosed that no offence was committed by the persons against

whom the complaint was filed. Accordingly, the said complaint was dismissed.

8. Learned counsel for the appellants has also produced on record the letter dated 04-05-2019 issued by the Police Inspector, Dhule Taluka Police Station, Dhule to Superintendent of Police, Dhule. It appears that the informant and Dinesh had sought police protection from Dhule Taluka Police Station, Dhule. Therefore, Police Inspector, Dhule Taluka Police Station, Dhule wrote a letter to the Superintendent of Police, Dhule and gave history of Dinesh and the informant. It appears from the said letter that Dinesh is facing seven criminal cases those are pending before the court. In view of the criminal background of Dinesh and the informant, the Superintendent of Police, Dhule had rejected the application for police protection.

9. On the basis of chequered history of the informant and Dinesh, learned counsel for the appellants submits that the informant is in habit of filing false complaint against many persons. He also submits that the appellants had undertaken contract of digging well in the field of grand-mother of informant. But due to rainy season and subsequent pandemic situation the work could not be completed. Therefore, there was dispute between the appellants and the informant. He also submits that the incident as alleged in the FIR has not taken place at all. He also submits that the witnesses cited in the FIR are close concerned of informant. He also

submits that if the word 'Chamtya' is kept out of consideration from the utterance, other utterance like work of informant should not have been accepted, and we are not afraid of Atrocities Act, and the appellant gave threat to kill him. It appears from the FIR that though it indicates threat or intimidation but it does not pointer to interference that there was any intent mensrea to humiliate on his caste within public view. To substantiate his point, he relied on the ratio laid down in the case of Kedarsingh Dharma Patil and others Vs State of Maharashtra and others reported in 2019 AllMR (Cri) Page No. 2974 wherein this court has observed that "if the FIR does not show that there was any intent, mens rea to humiliate the informant on his caste within the public view, the accused are entitled to pre-arrest bail." It appears from the FIR that incident of assault had taken place at public place. But, in view of the chequered history of the informant of lodging the complaint against the many persons and subsequently withdrawing it for ulterior motive, it would not be just and reasonable to reject the bail of the appellants.

10. Learned counsel for the appellants has produced the documents on 21-09-2021. Learned counsel for the informant had taken time to scrutiny of the said documents. But, said documents are not at all denied by the informant. So, it can be said that the informant has filed number of cases against the different persons including the appellant No.3. It also reveals from the said documents that the informant is in habit of filing of false

applications and subsequently withdrawing the same for the reasons best known to him. Therefore, Dhule Taluka Police Station, Dhule had also not taken the cognizance of the applications of informant on several occasions. In the present case there are allegations of hurling abuses over the caste. Therefore, it appears that the police have taken cognizance of the offence. The investigation is almost completed. No custodial interrogation of the appellants is required. Therefore, in my view the appellants are entitled for pre-arrest bail. Hence, I pass the following order:

ORDER

- i. The appeal is allowed.
- ii. The order dated 01-07-2021, passed by the learned Special Judge, Dhule below Exh. 1 in Criminal Bail Application No. 504 of 2021 is hereby set aside.
- iii. In the event of arrest in connection with the Crime No. 327/2021 dated 31-05-2021 registered with Dhule Taluka Police Station, Dist. Dhule for the offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code and Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellants namely; (1) Samadhan S/o. Rajaram Mali, (2) Rajaram

(10)

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S/o. Hasrat Mali and (3) Dinesh Namdev Mali shall be released on pre-arrest bail on executing each PR and SB bond in the sum of Rs. 15,000/- [Rupees Fifteen Thousand] each with one or more sureties in the like amount, on following conditions.:

(a) The appellants are directed to attend the Dhule Taluka Police Station, Dist. Dhule on every day from 29-09-2021 to 19-10-2021 between 10.00 am to 12.00 noon.

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

iv. The criminal appeal stands disposed of.

[SURENDRA P. TAVADE, J.]

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