

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

928 CRIMINAL APPEAL NO.353 OF 2021

- 1) Santosh s/o Vinayak Nandure,
Age; 40 years, Occ; Agril,
- 2) Amar s/o Balasaheb Solanke,
Age; 28 years, Occ; Agril,
- 3) Babasaheb s/o Shriram Solanke,
Age; 60 years, Occ; Agril,
- 4) Sunil s/o Sundarrao Solanke,
Age; 27 years, Occ; Agril,
- 5) Prakash s/o Keshav Kakde,
Age; 45 years, Occ; Agril,

All R/o; Rui-Dharur, Tq. Dharur,
District; Beed.

...APPELLANTS
(Original Accused
No. 1 to 5)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Dharur,
District; Beed.
- 2) Rajkumar Laxman Gaikwad,
Age; 25 years, Occ; Labour,
R/o; Rui-Dharur, Tq. Dharur,
District; Beed.

...RESPONDENTS
(Respondent No. 2
is the informant)

...
Advocate for Appellants : Mr. S.J. Salunke
APP for Respondent No. 1-State : Mr. S.N.Morampalle
Advocate for Respondent No. 2 : Mr. A. L. Kanade
...

CORAM : SURENDRA P.TAVADE , J.

DATE : 13th August, 2021.

ORDER :

1. The appellants have filed this appeal against the order passed by the Additional Sessions Judge, Majalgaon, District Beed in Misc. Criminal Application No. 165 of 2021 dated 08.07.2021, whereby, the prayer for pre-arrest bail of the appellants came to be rejected.

2. It is contended that the informant Rajkumar Laxman Gaikwad (R-2) filed First Information Report (for short 'FIR') on 25th June, 2021 wherein, he alleged that on 24th June, 2021 at 7.00 p.m. he had been to the grocery shop of one Narayan Mane to purchase tobacco. When he was in the shop of Narayan Mane, appellants came there and abused him by saying, "अरे महार तुम्ही काय, करणार आहेत तुम्ही आमचे तुकडे... खावून माजलात तुमच्याकडे बघितलच, पाहिजे" and assaulted him.

3. Thereafter, the appellants called Bolero Jeep and forced informant to seat in the jeep. They also assaulted him in the jeep. After some time, jeep was halted on the side of road. The informant was made to alight from the jeep. Appellants forced him to drink liquor and again assaulted him. It is further alleged that the informant was brought to the Police chouki, where, his wife and

mother came there at that time, appellant Santosh Vinayak Nandure threatened his wife. Due to the incident, the wife and mother of the informant were frightened and due to that they did not take any action against the appellants and returned home. On the next day, the informant disclosed the incident to the member of Grampanchayat namely Kashinath Govind Gaikwad. He gave moral support to him and accompanied him to lodge the report in the Police Station Dharur.

4. On the basis of First Information Report (for short "FIR"), Crime No. 134 came to be registered at Police Station Dharur, District Beed for the offences punishable under Sections 365, 143, 147, 149, 323, 504, 506 of the Indian Penal Code (for short "IPC") and under Section 3 (2) (va), 3 (1) (r) and 3 (1) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. On the basis of above allegations, it is contended on behalf of the appellants that the wife of appellant No. 1 lodged FIR No. 137 of 2021, against the informant and others for the offence punishable under Section 395 Indian Penal Code, wherein, she specifically alleged that the informant and other persons entered into the house of the appellant No. 1 and assaulted the wife of appellant No. 1 and the informant and others have snatched gold ornaments of the wife of appellant No. 1- Sharda.

6. It is further contended that the contents of the FIR are absurd. The informant has filed the false and bogus FIR with the help of political persons. It is the result of deliberation and embellishment. It is contended that FIR does not disclose any offence under the provisions of Atrocities Act against the appellants. It is contended that the informant has abused the process of law and misused the provisions of Atrocities Act and falsely implicated the appellants.

7. On the other hand, per contra, learned APP submitted that the contents of the FIR discloses offence under Atrocities Act. In view of Section 18 and 18-A of the Atrocities Act, the present appeal is not maintainable. The trial Court has rightly rejected the same.

8. Learned counsel for the respondent No. 2 reiterated that an offence is made out against the appellants, therefore, there is no need to consider the present appeal. The Trial Court has properly considered the case of the appellants and rejected the application for pre-arrest bail.

9. Heard Mr. S.J. Salunke, learned counsel for the appellants, Mr.S.N. Morampalle, learned APP for Respondents-State and Mr. A.L. Kanade, learned counsel for Respondent No. 2.

10. Learned APP for the State further submitted that the

Investigating Officer has recorded the statement of shop owner Narayan Mane. It appears that it is simply stated by Narayan Mane that when informant was in his shop, appellants came there and abused him over his caste. He has not given specific words used by the appellants. He simply made omnibus statement that all the appellants abused informant over his caste. Therefore, his statement is also not helpful to the prosecution. He also invited my attention to the statement of Shaikh Sameer Mustafa, who is the owner of Bolero jeep used in the alleged crime. He stated that he received telephone call from the appellants and accordingly he went to the shop of Narayan Mane. Appellants took the informant in the said jeep and brought him to the police station. But he has not whispered about the act of the appellants to force the informant to drink liquor. Similarly there is also no whisper about the assault on the informant by the appellants. So it can be said that the so called alleged eye witness also not substantiate the case of the informant that he was abused over his caste by each of the appellants by using specific words to humiliate him.

11. Learned counsel for the appellants invited my attention to the FIR. On going through the contents of FIR, it appears that general and omnibus statement is made by the informant that he was abused over his caste by the appellants. He further submitted that

such statement cannot be taken into account, therefore, it can be said that prima-facie offence is not made out by the informant. To substantiate this point, he has relied on the ratio in the case of **Vijaymala w/o Tanaji Dolare and Ors Vs. The State of Maharashtra and Anr. reported in 2020 ALL MR (Cri.) 1835**, wherein, it is held that,

“FIR discloses that all of the accused abused the informant, mechanically it could not have been in chorus and they can be given benefit of the decisions in Shashikant Ramhari Tambe and Ors Vs. State of Maharashtra, 2008 ALL MR (Cri) 2132 as well as Sughriv Prakash Garade and Ors Vs. The State of Maharashtra and Anr., Cri Appln. No. 2848 of 2016, dated 9.6.2016 case. When the abuses cannot be in chorus, prima facie, it will have to be observed that, the offences under the Atrocities Act are not made out against those appellants.”

12. In the present case also the informant made omnibus statement in the FIR that “he was abused over his caste by the appellants suggesting that all accused in chorus abused him over his caste,”, the said fact cannot be considered to be prima-facie material to implicate the present appellants in the crime.

13. He further submits that if the words “Mahar” is kept out of consideration from the other utterances like “तुम्ही काय, करणार आहेत तुम्ही आमचे तुकडे... खावून माजलात तुमच्याकडे बघितलच, पाहिजे”. perceived from the

FIR, though it indicates threat or intimidation, but does not pointer to the inference that there was any intent of mens rea to humiliate the informant on his caste within the public view. To substantiate this point, he has relied on the ratio laid down in **Kedarsingh Dharma Patil and Anr. Vs. The State of Maharashtra and Anr.** reported in **2019 ALL MR (Cri) 2974**, wherein, it is held that

“If the FIR does not show that there was any intent, mens-rea to humiliate on his caste, within the public view, the accused are entitled to pre-arrest bail. ”

In the present case also word “महार”, is quoted by the informant, if it is kept out from the complaint for moment, then the other utterances would indicate, threat, criminal intimidation but does not point out interference that there was any intent or mens-rea to humiliate the informant over his caste. Prima-facie no intent or mens rea is established from the FIR.

14. Learned counsel for the appellants submitted that the alleged incident occurred in the evening of 24th June, 2021 and the FIR came to be lodged on 25th June, 2021. He also submitted that the FIR itself states that on the next date of alleged incident he consulted the Member of Grampanchyat, Kashinath Govind Gaikwad, who gave him confidence and thereafter, he lodged the report to Police. On the basis of said fact he further submitted that there is possibility of false embellishment. He also submitted that the

informant was taken to police chauki by the appellants, had there been any incident as alleged by the informant then, he could have disclosed the same to police, who were present in the police chauki. But the incident allegedly narrated in the complaint suggest that he kept quiet and on the next day with the help of Grampanchyat Member he lodged complaint. The above fact can be considered at the time of trial while appreciating delay in lodging FIR but prima-facie it appears that the informant consulted the Grampanchyat Member and then he lodged the FIR. Therefore, it can be said that this fact can be used for exercising discretion under Section 438 of the Code of Criminal Procedure, 1973.

15. Learned counsel for the appellants further relied on the ratio in the case of **Hitesh Verma Vs. State of Uttarakhand and another, reported in 2021 Cri. L.J. 1 (AIR Online 2020 SC 812)** wherein, it is held that

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

16. Learned counsel for the appellants further relied on the ratio in the case of **Prathvi Raj Chauhan Vs. Union of India and Others reported in (2020) 4 Supreme Court Cases 727**, wherein, 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.”

17. On applying the above ratio it can be said that the informant has made bald statement in the FIR, that he was abused over his caste by all appellants, without giving any specific overt act of each of the appellants. He had opportunity to disclose the alleged incident to police, when he was taken to police chouki, but he did not

disclose the same, for the reasons best known to him. This also create doubt about the occurrence of the alleged incident.

18. On behalf of the informant, the learned counsel submitted that the informant was again threatened on 08th August, 2021, accordingly, he lodged N.C. report. He also submitted that the appellants are the strong persons in the society. Appellants are harassing the informant. They lodged false FIR against the informant and subsequently he was threatened for withdrawal of the present complaint. Therefore, appellants should not be released on pre-arrest bail.

19. On the other hand, the learned counsel for the appellants submitted that the informant has lodged false N.C. against the appellants.

20. On going through the N.C., it appears that the informant alleged that he was again abused and threatened by the appellants, but no action was taken by the police except registering of N.C. The police will take future course of action on the said N.C. but, it may not be considered at this stage.

21. On going through the material placed on record and the cases cited before me, I am of the opinion that the contents of the FIR are not helpful to prima-facie prove the offences under the Atrocities

Act, as alleged by the informant. Therefore, the appellants are entitled pre-arrest bail.

22. The Trial Court has not properly appreciated the contents of the FIR and came to the conclusion that there is prima-facie material against the appellants, hence the application for pre-arrest bail was rejected. The said order is required to be set aside. Hence the following order :

ORDER

- i) Appeal is allowed.
- ii) In the event of arrest, the appellants No.1) Santosh s/o Vinayak Nandure, 2) Amar s/o Balasaheb Solanke, 3) Babasaheb s/o Shriram Solanke, 4) Sunil s/o Sundarrao Solanke, 5) Prakash s/o Keshav Kakde, they be released on pre-arrest bail on 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 Police Station 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