

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

**CRIMINAL APPEAL NO.366 OF 2021**

- |                                                                          |                                        |
|--------------------------------------------------------------------------|----------------------------------------|
| 1. Rustum s/o. Baburao Shinde<br>Age.68 years, Occ. Agriculture,         | .. Appellants<br>[original<br>accused] |
| 2. Shankar s/o. Rustum Shinde<br>Age.48 years, Occ. Agriculture,         |                                        |
| 3. Dnyaneshwar s/o. Vishwanath Shinde<br>Age.24 years, Occ. Agriculture, |                                        |
| 4. Raju s/o. Shankar Shinde<br>Age.23 years, Occ. Agriculture,           |                                        |

All R/o.Village Aada, Tq. Kalamnuri,  
Dist. Hingoli.

**VERSUS**

- |                                                                                                                                    |                                                           |
|------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| 1. The State of Maharashtra<br>Through Police Station Officer,<br>Police Station Aakhada Balapur,<br>Tq. Kalamnuri, Dist. Hingoli. | .. Respondents<br>[Resp.No.2-<br>Original<br>complainant] |
| 2. Vidyanand s/o. Devidas Dhule<br>Age.38 years, Occ. Agril.,<br>R/o. Aada, Tq. Kalamnuri,<br>Dist. Hingoli.                       |                                                           |

Mr.R.R. Ingole, Advocate for the appellants.

Ms.G.L. Deshpande, APP for the respondent/State.

Mr.G.B. Kingre, Advocate (appointed) for respondent No.2.

**CORAM : SURENDRA P. TAVADE, J.**

**DATED : 18.08.2021**

**O R D E R :-**

01. The appellants have filed this appeal against the order passed by the Additional Sessions Judge-2, Hingoli, in Criminal M.A.No.228 of 2021 dated 19.07.2021, whereby the prayer for pre-arrest bail of the appellants came to be rejected.

02. Informant – Vidyanand Devidas Dhule filed FIR on 30.06.2021, wherein it is alleged that on 18.05.2021 at about 11.00 a.m. he was passing in front of the house of his cousin Raju Dhule, at that time the appellants came there. Appellant No.1 asked the informant “ये महा-या माजला काय”. The informant sought explanation of appellant No.1. Over this, appellant No.1 again called the informant as “महार” and threatened him that he would give dash of tractor to him. Similarly, other appellants also asked appellant No.1 to kill the informant by giving dash of tractor to him. Thereafter, the informant returned home. At about 1.30 pm. the mother of the informant disclosed to the

informant that the appellants have demolished bund of their land. The informant rushed towards his agricultural field and saw that the bund of his land was demolished. The appellants were present there. The informant asked appellant No.1 as to why he demolished the bund. Over this, appellant No.1 threatened him and again abused him over his caste.

03. On the basis of above allegations, it is contended that the appellants and the informant are having boundary dispute since long. By taking undue advantage of the caste, the informant has roped them in false case. It is contended that the alleged incident had taken place on 18.05.2021 but FIR came to be registered on 30.06.2021. No explanation of delay is given by the informant in the FIR. It is contended that with the help of RPI leader – D.D. Waghmare, the informant has lodged false and bogus FIR against them. It is also contended that the informant has made omnibus statement that the appellants abused him over the caste

and threatened to kill him.

04. It is contended that the Trial Court has not appreciated the contents of the FIR via-a-viz the delay in lodging the same. It is contended that the Trial Court has not considered the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act [for short "Atrocities Act"] in proper perspective and wrongly rejected the application of pre-arrest bail of the appellants.

05. On the other hand, learned APP submits that the informant had given complaint regarding the incident to Balapur Police Station, but no action was taken by the police. The informant had given number of applications from time to time, but no action was taken. Learned APP also submits that the informant had given application for police protection due to threats given by the appellants. On the basis of said applications, the Divisional Police Officer, Vasmat has given police protection to the

informant and his family members and thereafter the FIR came to be registered. The informant is not responsible for causing delay in lodging the FIR. He repeatedly visited the police station, but due to political pressure of appellant No.1, the police caused delay in lodging the FIR but ultimately the FIR came to be registered.

06. It is also contended by the APP that there are independent witnesses to the incident. They have stated that appellant No.1 has abused the informant over his caste and also threatened to kill him. So, the offence was occurred in public place and in public view to humiliate the informant. He also submits that the offence is prima facie made out. Therefore, there is bar of section 18 and 18A of the Atrocities Act to entertain the pre-arrest bail. Said aspect is properly dealt with by the Trial Court. The Trial Court has rightly rejected the application of the appellants. There is no merit in the appeal. Hence, it may be dismissed.

07. Learned Counsel for respondent No.2 reiterated the submissions of learned APP. He submits that after lodging the FIR, relatives of appellant No.1 threatened the informant on 12.07.2021. He submits that appellant No.1 and his relatives put pressure on the informant and his family members. He submits that if the appellants are released on bail, they may tamper with the prosecution witnesses and threaten the witnesses. Therefore, it is prayed that the appeal be rejected.

08. Perused the FIR. Admittedly, there is delay in lodging the FIR. No explanation of delay is given in the FIR. It appears that the informant had given application dated 21.06.2021 to the Sub-Divisional Police Officer, Vasmat for police protection, wherein he had referred his applications dated 20.05.2021, 01.06.2021, 02.06.2021 and 11.06.2021 given to the PI, Balapur Police Station. It is case of the informant that he had been to Balapur Police Station of lodging the FIR, but Police Officer did not record his FIR till 30.06.2021, due to political

pressure of appellant No.1. It appears that the informant has communicated the incident of 18.05.2021 to Sub Divisional Police Officer. Inspite of written applications, the police did not take action against the appellant forthwith. The aspect of delay in lodging the FIR can be considered at the time of appreciation of evidence. For decision of this appeal, one can take into account the action of police of granting police protection to the informant and his family members due to threats given by the appellants.

09. The appellants are facing charge under section 3(2)(va) of the Atrocities Act, which runs as under :-

"3(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine."

10. It is specifically alleged by the informant that

appellant No.1 abused him over his caste and threatened that he would be killed by dash of tractor. It is also alleged that the appellants demolished bund situated in the land of the informant. The panchanama is also prepared to that effect, which shows that the bund situated in the land of informant was damaged. It is specifically alleged by the informant that all the appellants were present in his field when he reached to see the condition of his bund. Appellant No.1 abused him over his caste and threatened to kill him. It appears that the bund was demolished by the appellants. Therefore, offence under section 3(2)(va) of the Atrocities Act is prima facie made out against the appellants. The Counsel for the appellant had relied upon the ratio laid down in the cases of (i) Yamunabai w/o. Kundlik Suryawanshi Vs. The State of Maharashtra and Anr., Criminal Appeal No.452 of 2020, (ii) Prathvi Raj Chauhan Vs. Union of India & Ors., (2020) 4 SCC 727 and (iii) Pappu Ashok Supekar & Ors. Vs. The State of Maharashtra & Ors., Cri. Appeal No.250 of 2020 with

Interim Application No.1 of 2020. In the case of Yamunabai and Pappu cited supra, this Court held that no prima facie case was made out against the appellants. Therefore, they were released on pre-arrest bail. In the case of Prathvi Raj Chauhan cited supra the Supreme Court has 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 under 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."

11. Applying above ratio, it can be said that if prima facie case is made out against the accused, then provisions of sections 18 and 19A would come into play,

the accused may not be entitled for bail. In the present case, I have already observed that the offence under section 3(2)(va) of the Atrocities Act is prima facie established by the prosecution. Similarly, there are witnesses to the incident. Therefore, it can be said that the appellants are not entitled to pre-arrest bail.

12. The Trial Court has rightly considered the material placed before him and rejected the application of the appellants. There is no need to interfere with the said order. Hence, I pass following order :-

**O R D E R**

i) Appeal is dismissed.

ii) The fees of the Counsel appointed for respondent No.2 is quantified at Rs.3000/- [Rupees Three Thousand Only] to be paid by High Court Legal Services Sub-Committee, Aurangabad Bench, Aurangabad.

**[SURENDRA P. TAVADE,J.]**