

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

916 CRIMINAL APPEAL NO.376 OF 2021

1. Rajendra Chagan Jamdade @ Jamdave,
Age; 51 years, Occ; Business,
R/o; Satbhai Gali, Mohanbag,
Delhi Gate, Ahmednagar.
2. Mahesh Mahadev Sabban,
Age; 41 years, Occ; Business,
R/o; Near Jangubhai Talim,
Topkhana, Ahmednagar.
3. Shrikant Shankar Chindam,
Age; 46 years, Occ; Business,
R/o; Mohanbag, Delhi Gate,
Ahmednagar.
4. Shripad Shankar Chindam,
Age; 40 years, Occ; Business,
R/o; Mohanbag, Delhi Gate,
Ahmednagar.

...Appellants

VERSUS

1. State of Maharashtra
Through its Senior Inspector,
Topkhana Police Station,
Ahmednagar.
2. Bhagirath Bhanudas Bodakhe,
Age; 52 years, Occ; Labour,
R/o; Plot No. 24/25,
Kalyanbaba Housing Society,
Warulacha Maruti, Nalegaon,
District; Ahmednagar.

...Respondents

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Advocate for Appellants : Ms. Pradnya S.Talekar (for Talekar and Associates)

APP for Respondent No. 1-State : Mr.R.B.Bagul
Advocate for Respondent No. 2 : Mr. V.P. Latange

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CORAM : SURENDRA P.TAVADE , J.

DATE : 2nd September, 2021.

P. C. :

1. Being aggrieved and dis-satisfied with the order passed by the learned Additional Sessions Judge, Ahmednagar, on Exh. 1, in Criminal (Bail) M.A. No. 1150 of 2021, dated 29th July 2021, the appellants have filed this appeal for grant of pre-arrest bail.

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

One Bhagirath Bhanudas Bodakhe has lodged FIR on 15.07.2021, wherein, he alleged that on 09th July, 2021 he was present in his Juice Center, Delhi Gate. Ahmednagar. On that day at 12.00 hours appellants came in front of his Juice Center and started abusing him. The appellants were accompanied by around 30-40 people. They came along with JCB machine. It is alleged that the appellants and others started damaging the articles kept in the Juice Center. The said Juice Center was owned by one Girish Jadhav, hence the informant called him on phone and narrated the incident. Similarly the informant also called his son and wife at the spot. Accordingly his son and wife reached on the spot. Similarly his friend Santosh Sathe and Salim Ahmedn Shaikh also came on the spot. It is alleged that appellant No. 3 abused him over his caste and

threatened him. The informant requested the appellants not to cause any damage to his Juice Center, but the appellants and others removed cash of Rs. 30,000/- from the Cash Box and also damaged the articles kept in the Juice Center. It is alleged that with the help of JCB machine they caused damage to the Juice Center and demolished it. Thereafter, the appellants and their associates ran away from the spot. It is contended by the informant that as he was threatened by appellant Nos. 3 and 4, therefore, he was frightened and hence could not lodge the FIR immediately. On the basis of the FIR, crime No. 584 of 2021 came to be registered against the appellants and the others for the offences punishable under Sections 392, 448, 451, 143, 147, 149, 427, 504, 506 of the Indian Penal Code and under Section 3 (1) (r) and 3 (1) (s) and Za (e) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. In view of the registration of crime the appellants had filed an application for pre-arrest bail before the trial Court but the trial Court has rejected the application on the ground that prima-facie the offence is made out against them under the provisions of Atrocities Act. The said order is impugned in this appeal.

4. On the basis of the allegations made in the FIR, the learned counsel for the appellants submits that there is delay in lodging the FIR, which is not at all explained. It is contended that the

appellant Nos. 3 and 4 had purchased a plot in question bearing No. CTS 7395 B/3, ad-measuring 3642.73 sq. meter from one Ashutosh Satish Landge on 14th May, 2021. It is contended that appellant Nos. 3 and 4 were installing tin shed on the property purchased by them, but Girish Jadhav and others threatened the appellants and demanded protection money of Rs. 10,000/- each for this tenement, to which the appellants have refused to pay, therefore, with the help of informant and others the appellants are falsely implicated in the crime. It is contended that one Madan Purohit lodged a complaint against Girish Jadhav and others for the demand of protection money. It is also contended that Anita Gundu and others had given application to Superintendent of Police on 26.07.2021, wherein, the said persons alleged that no incident as alleged by the informant Bhagirath Bodkhe had taken place. It is contended that the modus operandi of Girish Jadhav is to grab the property and demand the protection money from the Stall Holders. It is contended that after the purchase of property, appellant Nos. 3 and 4 had given contract of fabrication for the installation of the Stall. Accordingly, six stalls were installed by the appellants, but Girish Jadhav and others were demanding money from the appellants. It is contended that appellant Nos. 3 and 4 are the political leaders, therefore, they are being dragged in the false case. It is contended that the appellants were not knowing Bhagirath Bhodke, therefore, they were not knowing his

caste as alleged by him.

5. It is contended that the trial Court has not appreciated the facts narrated by the appellants in the application for pre-arrest bail. Similarly, the trial Court has not considered the documents produced by the appellants in the proper perspective, therefore, the order passed by the trial Court is required to be set aside.

6. Learned APP for the respondent-State submits that the informant was working in the Juice Center of Girish Jadhav since last 5-6 years prior to the incident. The informant has also produced on record the shop license of the Juice Center under the Shop & Establishment Act. Therefore, prima-facie the existence of the Juice Center is established from the contents of the FIR. It is contended that even if the story of appellants is considered still, the allegations of the informant regarding his humiliation over his caste cannot be over looked. It is also contended that the incident had taken place on public place in public view. There are independent witnesses, who substantiated the story of the informant, therefore, it cannot be said that no incident as alleged by the informant is taken place at all. It is contended that the Juice Center of the informant was completely damaged by the group of people including the appellants. Therefore, offence under the Atrocities Act is prima-facie made out against the appellants, therefore, the trial Court has rightly rejected the

application. Hence, there is no need to interfere with the order of the trial Court.

7. Perused the FIR. It appears that the informant was knowing the appellants and others. The said fact is also established from the application submitted by the appellants before police wherein, they apprehended that they can be implicated under the provisions of Atrocities Act. The informant has categorically stated that the persons known to him namely the appellants and 30-40 people came in front of the shop along with JCB machine. Appellant No. 3 took lead in the matter and abused him over his caste and damaged the Juice Center. It is also alleged that with the help of JCB machine, the entire Juice Center was demolished and caused the damage to the property of the informant Girish Jadhav. It appears that the Juice Center is the property of Girish Jadhav, which was being run by the informant. On going through the FIR, it appears that the allegations of hurling abuses over caste attributed to the appellant Nos. 3 and 4 only. On minute reading of the FIR, it appears that appellant Nos. 1 and 2 had accompanied with appellant Nos. 3 and 4, thereafter the incident had taken place. There are allegations against appellant Nos. 3 and 4 that they asked the mob to demolish the Juice Center of the informant, accordingly the Juice Center was completely demolished. Therefore, prima-facie, it appears

that at the instance of appellant Nos. 3 and 4, the mob has taken lead to demolish the premise of Juice Center run by the informant.

8. It is alleged against the appellants that they abused the informant over his caste and humiliated him, but the said allegations are against appellant Nos. 3 and 4 only. As far as, the damage to the property is concerned, it is alleged that the appellants along with 30-40 people had damaged the Juice Center with the help of JCB machine. There are no allegations against appellant Nos. 1 and 2 that they were driving the JCB machine to damage the Juice Center. General statement is made by the informant that appellants and 30-40 people damaged his shop of Juice Center, with the help of JCB machine.

9. The Investigating Officer has prepared the scene of offence panchanama, wherein, it is mentioned that the Juice Center was completely damaged and it was thrown on the different place with the help of crane. So prima-facie it appears that the act of the damaging the property was done by many people including the appellants. The said property was owned by Girish Jadhav, who is not the member of Scheduled Caste and Scheduled Tribes. Thus, it is doubtful, whether offence under Section 3 (va) is made out or not against the appellants. But at the same time, prima-facie it appears that offence under Section 3 (1) (r) (s) is made out against appellant

Nos. 3 and 4, therefore, there is bar of Section 18 and 18-A of the Atrocity Act to entertain the present application as far as appellant Nos. 3 and 4 are concerned.

10. The learned counsel for the appellants has relied on the following case laws :

- a. Ramdas Vs. State of Madras (2007) 2 SCC 170,
- b. State of Madhya Pradesh V. Ratan Singh, (2020) 12 SCC 630,
- c. Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710,
- d. Prathvi Raj Chavan V. Union of India (2020) 4 SCC 727,
- e. Rahna Jalal v. State of Kerala, (2021) 1 SCC 733,
- f. Ramchandra Govindrao Watkar v. State of Maharashtra, 1995 (2) Mah. L.J. 669,
- g. Nitin Anna Patil V. The State of Maharashtra, 2015, SCC On Line Bom. 8109,
- h. Prakash Yashwant Bhosale Vs.State of Maharashtra, 2018, SCC On Line Bom. 16103,
- i. Papu Ashok Supekar vs. State of Maharashtra 2020 SCC On Line Bom. 831.

11. I have gone through the above authorities. On facts, it can be said that the offence is prima-facie made out under the provisions of Atrocities Act, thus there is bar of Section 18 and 18-A of the Act to entertain the appeal as far as appellant Nos. 3 and 4 are

concerned. In view of the said facts, I hold that appellant Nos. 3 and 4 are not entitled to the bail, but at the same time appellant Nos. 1 and 2 are entitled to bail, as there is no prima-facie material involving them in the offences punishable under Sections 3 (1) (r), 3 (1) (s) and za (e) of the Atrocities Act, therefore, they are entitled for bail. With this I pass following order :

ORDER

- a) Appeal is partly allowed.
- b) In the event of arrest, appellant Nos. 1. Rajendra Chagan Jamdade @ Jamdave and 2. Mahesh Mahadev Sabban, are released on bail on executing of their PR and SB of Rs. 15,000/- (Rs. Fifteen Thousand) each with directions to attend police station on every day from 03rd September, 2021 till 15th September, 2021, in between 10.00 a.m. to 12.00 p.m.
- c) They are directed not to tamper the prosecution witnesses in any manner, whatsoever.
- d) Appeal preferred by appellant Nos. 3 and 4 is hereby dismissed.”

**(SURENDRA P.TAVADE)
JUDGE**