

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

931 CRIMINAL APPEAL NO. 433 OF 2021

1. Riyaz Chandsaheb Quraishi, **...APPELLANTS**
Age-37 years, Occu-Butcher,
R/o. 120, Wardu, At Post Dongarkheda,
Tq. Kalamnoori, Dist. Hingoli
2. Javed S/o. Aziz Quraishi,
Age-40 years, Occu-Butcher,
R/o. 123, Warud, A/P. Dongarkheda,
Tq. Kalamnoori, Dist. Hingoli

VERSUS

1. The State of Maharashtra, **...RESPONDENTS**
Through Akahada Balapur Police Station,
Tq. Kalamnoori, Dist. Hingoli
2. Vilas Fakirji Kamble,
Age-52 years, Occu-Welder,
R/o. Warud, Tq. Kalamnoori,
Dist. Hingoli

Mrs. A. N. Ansari, Advocate for the appellants
Mr. S. P. Sonpawale, APP for the respondent/State
Mr. S. A. Nagarsoge, Advocate for the respondent No.2 (appointed)

CORAM : SURENDRA P. TAVADE, J.

DATE : 05-10-2021

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. Being aggrieved and dissatisfied with the order dated
28-08-2021 passed by the learned Additional Sessions Judge,

Hingoli in Criminal Bail Application No. 300 of 2021, whereby the Sessions Court rejected the application of the appellants for pre-arrest bail.

2. The facts giving rise to the present appeal, can be summarized are as under:-

a] The appellants are apprehending their arrest in Crime No. 286 of 2021 registered with Akhada Balapur Police Station, Tq. Kalamnoori, Dist. Hingoli for the offences punishable under Sections 294, 506 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC') and Sections 3(1)(r), 3(1)(d) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act'). It is contended that Vilas Kamble has lodged the report in Akhada Balapur Police Station on 14-08-2021. He alleged that his community is having crematorium at village Akhada Balapur. It is alleged that the appellant No.1 was encroaching upon the crematorium of Baudha community. Therefore, the informant and others were removing the said encroachment. It is alleged that the appellants came there and they abused the informant and others over their caste and humiliated them. They also abused that they would commit rape on the wife of the informant. It is alleged that the appellant No. 1 pulled the wife of the informant by holding her hand. Meantime, the informant intervened in the matter. But, he was abused and assaulted by the appellant No.2. It is alleged that

the appellants also threatened that they would kill the informant and others like goat. It is alleged that Gangaprasad Sontakke, Vaidan Garad, Bebibai Pandit, Indubai Sarode, Nirmalbai Pandit, Baban Pandit, Shivaji Pandit came on the spot and they rescued the informant and others. Thereafter, the informant came to the police station and lodged the report.

3. On the basis of contents of FIR, learned counsel for the appellants submits that no incident as alleged by the informant had taken place. According to the learned counsel for the appellants there was meeting of Tantamukti to settle the dispute of place of crematorium. But the said issue was not settled. Hence, there was some altercation. Therefore, this false complaint came to be lodged against the appellants. It is contended that the appellants were not present on 11-08-2021 as they had been to village Waranga for weekly Bazar. It is contended that the trial court has not appreciated the facts of the case properly. It is contended that no offence under the Atrocities Act is prima-facie made out against the appellants. Therefore, there is no bar of Section 18 of the Atrocities Act to entertain the present appeal. Therefore, it is prayed that by allowing the appeal the appellants be released on bail.

4. On the other hand, learned APP submits that on bear reading of FIR, it appears that prima-facie case is made out against the appellants under the Atrocities Act. Learned APP submits that the appellants abused the informant and witnesses on the public

place and the said incident was viewed by many persons. He also submits that the appellants hurled abuses over the caste of the informant and also assaulted the informant and others. He also submits that the wife of the informant was manhandled by the appellants. Therefore, prima-facie offence is made out against the appellants.

5. Learned counsel for the respondent No.2 reiterated the submission of the learned APP.

6. Learned counsel for the respondent No.2 has relied on the ratio laid down in the case of Vilas Pandurang Pawar and another Vs State of Maharashtra and others reported in 2012 (4) Mh.L.J. (Cri.)707 wherein the Apex Court held that;

“Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the Court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail. The scope of the section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail, when an offence is registered against a person under the provisions of the

SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence. The petitioners are not entitled to anticipatory bail under Section 438 of the Code, in the light of the specific averments in the complaint made by the complainant”

7. Heard learned counsel for the appellants, learned APP and learned counsel for the respondent No.2.

8. Perused the FIR. It appears from the FIR that the incident alleged to have been taken place on 11-08-2021 at about 09.00 am. There are specific allegations that the appellants abused the informant and his wife over their caste and humiliated them. It also appears that the appellant No.1 pulled the wife of the informant and thereafter assaulted the informant. It also appears from the FIR that the appellants had threatened the informant and others that they would kill them. The informant has also mentioned the names of the persons who came on the spot and rescued them.

On this point, learned counsel for the appellants submits that one of the witness namely Gangaprasad Sontakke has given affidavit that he was not present on the spot and the incident as alleged had not taken place. Learned APP has produced on record the the investigation papers. It appears that the statement of Gangaprasad Sontakke was not recorded by the Investigation Officer. But, it appears that the statement of other witnesses are recorded. They claimed that the appellants abused the informant and his wife and assaulted them. It is also came in the FIR and statements of witnesses that the appellants had knowledge that the informant and the witnesses belong to the Baudha community and they were raising dispute regarding illegal construction carried out by the appellants in the crematorium of the Baudha community. So, prima-facie it appears that the appellants knew that the informant and witnesses belong to Baudha community.

9. On bare perusal of the FIR and the statements of witnesses, it appears that the appellants assaulted the informant and his wife and threatened them. Therefore, the charge against the appellants are prima-facie made out. Therefore, there is bar of Section 18 of the Atrocities Act to entertain the appeal.

10. I have perused the impugned order. The trial court has rightly considered the allegations made in the FIR and came to correct conclusion. Therefore, there is no need to interfere with the findings of the trial court. In the present case, the above ratio laid

down in the case of Vilas Pandurang Pawar and another (supra) is squarely applicable. I have also observed that on bare reading of the FIR, the offences under Atrocities Act are made out against the appellants.

11. The appeal is dismissed.

12. Mr. S. A. Nagarsoge, Advocate was appointed to represent the respondent No.2 through Legal Aid. I appreciate his sincere efforts in conducting the matter. I quantify his fees at Rs.1500/-.

[SURENDRA P. TAVADE, J.]

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