

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

904 CRIMINAL APPEAL NO.628 OF 2020

Pradip Nandkishor Mahalle

Age : 46 years, Occu : Agricultural

R/o. Nirala, Tal. Kinwat,

Dist. Nanded

.. Appellant

VERSUS

1. The State of Maharashtra
Through, The Divisional Superintendent of Police,
Nanded, Dist. Nanded

2. The Police Inspector,
Police Station, Mandvi,
Tal. Kinwat, Dist. Nanded

3. Sunil s/o Anandrao Gedam
Age: 45 years, Occu : Agricultural,
R/o. Nirala, Tal. Kinwat,
Dist. Nanded

.. Respondents

...

Advocate for Appellant : Mr Rahul B. Temak
APP for Respondents 1 and 2 : Mr S.G. Sangle

...

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

Date : 06-01-2021

PER COURT :-

1. By this appeal, the appellant has put forth prayer clauses

(A) (B) (C) & (D) as under :

“(A) The impugned judgment and order dated 06.11.2020
passed by the Learned Additional Judge-2 Nanded below

Exhibit 1 in Criminal Bail Application No.762 of 2020 may kindly be quashed and set aside.

(Exhibit “C”, page 25).

(B) Be pleased to grant anticipatory bail in Crime Register No.0036/2020 under section 3 (2)(v) of Scheduled Castes and Scheduled Tribes (Atrocities) Act 1989 and under Section 323, 324 and 326 of Indian Penal Code, 1860 registered with Police Station, Mandvi, Tq. Kinwat, Dist. Nanded.

(C) Pending hearing and final disposal of the present Criminal Appeal, the present applicant be released on anticipatory bail in Crime Register No.0036/2020 under section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Atrocities) Act 1989 and under Section 323, 324 and 326 of Indian Penal Code 1860 registered with Police Station, Mandvi, Tq. Kinwat, Dist. Nanded.

(D) Any other just and equitable order in the interest of justice may kindly be passed.”

2. We have heard the learned Advocate for the appellant and the learned Prosecutor on behalf of respondent nos.1 and 2. With their assistance, we have gone through the appeal paper book and we have also perused certain additional documents produced across the bar by the learned Advocate for the appellant.

3. The thrust of the appellant’s submission is that offences under Sections 3(1)(r), 3 (1)(s) and 3 (2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter in short ‘1989 Act’) are not attracted at all.

4. We have perused the FIR in which we find specific averments against the appellant of having abused the complainant in a public place where the spot was earmarked for installation of the statue of Krantiveer Baburao Puleshwar Shedmake, who is said to be a public figure in the said village and belonging to the *Adivasi* tribe. The spot was reserved for installation of his statue for about 8 to 9 years and a specific name plate was installed for identifying the spot. The present appellant is said to have pulled out the name plate and destroyed the identification of the spot for which the complainant confronted the appellant. This confrontation took place on 22-04-2020 at about 02:00 p.m. at the public place near the spot where the statue was to be installed. A worker was brought by the present appellant, whose name is also mentioned in the FIR, for destroying the name plate. When the complainant asked for an explanation from the accused, the accused is said to have declared that he is the Lord of the village and then has used foul and filthy language by using abusive words attributing to the particular tribe of the complainant to which he belongs. The accused is alleged to have further said that he would destroy all signs of persons belonging to that tribe and began assaulting the complainant.

5. The accused picked up a stone and is said to have hit the

complainant on his right eye and his skull thereby causing a bleeding injury leading to the complainant becoming unconscious at the spot. People, who had gathered, picked up the complainant and took him to his residence. The Medico Legal Certificate dated 22-04-2020 timed at 02:40 p.m., issued by the Medical Officer of the Government Rural Hospital, Mandvi, Tal. Kinwat indicates that the complainant has suffered an incised wound just above his eye brow. The wound is described as being of horizontal shape with clear margin. It was a fresh injury caused by a sharp weapon and the nature of injury was termed as being a grievous injury.

6. The learned Advocate for the appellant has tendered across the bar an application filed under Right to Information Act, 2005 dated 17-12-2020 seeking information about the patients examined in the OPD on 24-04-2020 and further details about the medical examination of the complainant and the medical certificate issued to him. By communication dated 19-12-2020, the Medical Officer, Class-I, has informed the appellant that 27 patients were examined on 24-04-2020 who were OPD patients and 2 other patients were admitted. The complainant was not admitted and that no Medical Certificate was issued to the complainant on 24-04-2020. We have taken on record the above referred communication (2

pages) and have collectively marked the same as 'X' for identification.

7. We find that the MLC issued by the Medical Officer to the complainant is dated 22-04-2020 and not 24-04-2020. As the appellant concentrated on the date 24-04-2020, the Medical Officer has informed him that no certificate was issued to the complainant on 24-04-2020, which is technically a factual position.

8. Considering the above, we find that the alleged incident of the appellant assaulting the complainant, was at a public place in front of the spot earmarked for the installation of a statue of a social worker. People had gathered around because of the confrontation between the appellant and the complainant. After the complainant suffered a grievous injury and became unconscious, people who had gathered at the place are said to have carried him to his residence, where-from he was carried to the Government Medical Hospital.

9. In view of the above, *prima facie*, we find that the provisions invoked in the FIR are applicable to this case. A grievous injury has been caused to the complainant and tribe based abuses have been hurled by the accused. The appellant is praying for anticipatory bail and investigation is handicapped on account of he

not being traceable. The statement of the injured, who is the complainant, will have to be considered and hence we do not find that this appeal deserves to be entertained at this stage.

10. Prior to moving this Criminal Appeal against the impugned order, the appellant had moved the learned Single Judge and after hearing of the application for anticipatory bail, the appellant had withdrawn the application since the Investigating Officer was, then, of the view that the provisions of the 1989 Act are not attracted. The medical certificate was not on record before the I.O. However, we have perused the case papers placed before us and on appreciation of the contents of the case papers and the medico legal certificate, we have drawn our conclusion that the provisions of the 1989 Act are attracted.

11. Hence, the Criminal Appeal is dismissed.

(B. U. DEBADWAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE