

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

CRIMINAL APPEAL NO.661 OF 2020

Shri Madhav s/o Digambar Jagtap ... **APPELLANT**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Shri N.N. Desale, Advocate for appellant
Shri S.N. Morampalle, A.P.P. for respondent No.1 – State
Shri G.J. Pahilwan, Advocate for respondent No.2
.....

CORAM : R. G. AVACHAT, J.

DATE : 21st JUNE, 2021

ORDER :

The Special Court under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the Act) declined to grant the appellant anticipatory bail. Hence the present appeal.

2. Heard Mr. Desale, learned counsel for the appellant. Perused the First Information Report (F.I.R.), related papers and the impugned order as well. The F.I.R. has been lodged on 7/11/2020 relating to the incident that took

place on 7/9/2020 at village Palaswadi, Taluka Khultabad, District Aurangabad. It is averred in the F.I.R. that, the informant belongs to Scheduled Caste. He runs a footwear shop opposite Zilla Parishad School in the village Palaswadi. The appellant and his brother Yadav have been known to the informant. Both of them knew the informant to have belonged to Scheduled Caste. Both the appellant and his brother were engaged in installing filter water tank and erection of wire fencing on the public road that runs from in front of the informant's shop. The informant has, therefore, requested them not to proceed with the work. They, however, did not listen. The work of placing the filter water tank was being made in such a way as would completely close the informant's access to his shop. When the informant requested both of them not to go ahead with the work, both of them abused him in filthy language and over his caste as well. They also threatened the informant of setting his shop ablaze.

3. The learned counsel for the appellant would submit that, there is a delay in lodging of the F.I.R. Offence under the Act has been invoked only with a view to see the appellant is arrested. The offences under the Indian Penal

Code alleged to have been committed by the appellant are all bailable one. The learned counsel, therefore, urged for allowing the appeal.

4. The learned A.P.P. and the learned counsel for respondent No.2 would, on the other hand, submit that, the allegations in the F.I.R. prima facie make out the offence under the Act. In view of Section 18 of the Act, there is clear bar for grant of anticipatory bail. Both the learned counsel reiterated the reasons given by the Special Court in support of the impugned order.

5. Although Section 18 of the Act excludes application of Section 438 of the Criminal Procedure Code in relation to any case involving arrest of any person on an accusation of having committed offence under the Act, the Court is not precluded from ascertaining as to whether really an offence under the Act is made out. If no prima facie case is made out, or when on judicial scrutiny the complaint is found to be prima facie malafide, there is absolutely no bar against grant of anticipatory bail in cases under the Atrocities Act. **(Pruthvi Raj Chauhan Vs. Union of India & ors. [(2020) 4 SCC 72]**.

6. In the case in hand, the F.I.R. has been lodged belatedly. There is a dispute between the appellant and the informant over the land. A civil dispute is also subjudice before the competent Court. Offences under the Indian Penal Code alleged to have been committed by the appellant are all bailable ones. Both the appellant and his brother are alleged to have abused in one voice/ simultaneously the informant over his caste. Although the same is not impossible, it is very difficult to assume that both the brothers at one and the same time would utter the same words so as to abuse the informant over his caste in public view.

7. In short, the delay in lodging of the F.I.R. and the factum of the relations between the appellant and the informant to have not been good due to civil dispute, a case can be said to have been made out for grant of anticipatory bail. In the result, interference with the impugned order is called for. The appeal thus succeeds. Hence the order :-

ORDER

(i) The Criminal Appeal is allowed. The order dated

7/12/2020, passed by the I/c Special Judge under the SC ST (POA) Act, Aurangabad in Bail Application No.1757/2020 is set aside.

(ii) In the event of arrest of the appellant in connection with C.R. No.359/2020, registered at Khultabad Police Station, District Aurangabad for the offences punishable under Sections 341, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), (5), (7), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(iii) The appellant shall appear before the investigating officer as and when required and shall not tamper with the prosecution evidence.

**(R. G. AVACHAT)
JUDGE**

fmp/-