

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

908 CRIMINAL APPEAL NO.493 OF 2021

1. Madhav s/o Taterao Kshirsagar,
Age; 38 years, Occ; Agril,
R/o; Belsar, Tq. Ardhapur,
District; Nanded.
2. Sandeep s/o Murlidhar Kshirsagar
Age; 25 years, Occ; Agriculture,
R/o; Belsar, Tq. Ardhapur,
District; Nanded.

...APPELLANTS

(Orig. Accused Nos.
1 & 2 as shown in FIR)

VERSUS

1. The State of Maharashtra,
Through Police Station Ardhapur,
District; Nanded.
2. Datta Tukaram Waghmare,
Age; 50 years, Occ; Labour,
R/o; Belsar, Tq. Ardhapur,
District; Nanded.

...RESPONDENTS

(Respondent No. 2
is the informant)

...

Advocate for Appellants : Mr.Salunke Sudarshan J.
APP for Respondent No. 1-State : Mrs. G.L.Deshpande
Advocate for Respondent No. 2 : Mr. S.N.Devmane

...

CORAM : N.R. BORKAR , J.

DATE : 22nd October, 2021.

P. C. :

1. This appeal takes an exception to the order dated
09.08.2021 passed by the learned Additional Sessions Judge, Nanded

in Misc. Criminal Bail Application No. 370 of 2021

2. The appellants who are accused in Crime No. 102 of 2021 registered at Ardhapur Police Station for the offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code (for short "IPC") and under Section 3 (1) (r) and 3 (1) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short "the Act") have filed application under Section 438 of the Code of Criminal Procedure (for short "Cr.P.C.") for anticipatory bail. The said application came to be rejected by the order impugned.

3. I have heard the learned counsel for the appellants, learned APP for respondent-State and learned counsel for respondent No. 2.

4. Learned counsel for the appellants submits that the FIR will show that respondent No. 2 is illiterate, however, a written complaint was brought by respondent No.2, and therefore possibility of false implication by somebody else can not be ruled out. It is submitted that even otherwise omnibus allegations are made against all the appellants/accused. It is further submitted that FIR itself will show that respondent No. 2/complainant came to the place of incident and had raised dispute with the appellants. It is submitted

that in such circumstances, it cannot be said that respondent No. 2 was intentionally insulted with intent to humiliate him.

5. On the other hand, learned APP for respondent-State submits that applicants are involved in serious offences punishable under Section 3 (1) (r) and 3 (1) (s) of the Act. It is submitted that there is a bar to entertain anticipatory bail under Section 18 of the Act, 1989. It is further submitted even otherwise, considering the nature of allegations the appellants are not entitled for anticipatory bail.

6. I have perused the FIR. It appears that respondent No. 2 is illiterate as he has put the thumb impression on the FIR. However, the written complaint was brought to the concerned police station.

7. According to the respondent No. 2/complainant three accused persons assaulted him with fist and kicks blows and with shoes and chapples. However, from injury certificate, the respondent No. 2/complainant appears to have sustained only simple injuries i.e. laceration over upper lip, abrasion over left cheek and a blunt trauma on left arm. Prima-facie allegations therefore appears to be exaggerated. It further appears that the respondent No. 2 came to the place of incident and had raised the dispute with the appellants.

Apart from this, according to the respondent No. 2/complainant, he was insulted and abused on caste in public view, but there appears to be no independent witness to that effect. Considering these facts and circumstances, I am inclined to allow the present appeal. Hence following order is passed :

ORDER

- a. Appeal is allowed.
- b. The impugned order is set aside.
- c. In the event of arrest of the appellants in Crime No. 102 of 2021 for the offences punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3 (1) (r) and 3 (1) (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they be released on executing P.R. bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) each with one surety in the like amount.
- d. Fees in accordance with the rules shall be paid to the appointed counsel for the respondent No. 2/Complainant, through the High Court Legal Aid Sub-Committee, Aurangabad.

(N.R. BORKAR)
JUDGE