

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL [STAMP] NO. 5352 OF 2020

Ramesh Harischandra Patil

...Appellant

Versus

The State of Maharashtra & Anr.

...Respondents

ALONG WITH
CRIMINAL APPEAL NO. 193 OF 2021

Ganesh Vasant Mahadik

...Appellant

Versus

The State of Maharashtra & Anr.

...Respondents

ALONG WITH
CRIMINAL APPEAL NO. 451 OF 2021

Chinmay Dhanaji Gurav

...Appellant

Versus

The State of Maharashtra & Ors.

...Respondents

...

Mr. Sanjeev Kadam a/w. Ms. Varsha M. Thorat & Mr. Prashant Raul for appellant in Appeal Nos. 193/2021, 451/2021 and Appeal Stamp No. 5352/2020.

Mr. Nitesh V. Bhutekar for Respondent No. 2 in Appeal No. 193/2021 and Appeal Stamp No. 5352/2021.

Mr. J.P. Yagnik, APP for State.

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**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

**RESERVED ON : 23rd AUGUST, 2021.
PRONOUNCED ON: 3rd SEPTEMBER, 2021.**

JUDGMENT: [PER: N.J. JAMADAR, J.]

1. These appeals under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC & ST Act'), assail the legality, propriety and correctness of the orders passed by the learned Special Judge, Mangaon, Raigad, rejecting the applications of the appellants-applicants for pre-arrest bail, in connection with C.R. bearing No. 146/2019 registered at Mahad Police Station for the offences punishable under Section 307, 326, 325, 324, 323, 120-B, 143, 147, 148, 149, 109, 201 of the Indian Penal Code, 1860 ('Penal Code') and Section 3(1)(4), 3(ii)(va) of the SC & ST Act, Section 3(1) of the Prevention of Damage To The Public Property Act, 1984 and Section 37 read with 135 of the Maharashtra Police Act, 1951, against the appellants and co-accused.

2. Since all the appellants had sought anticipatory bail in connection with C.R. bearing No. 146/2019, though their applications have been dismissed by the learned Special Judge by distinct orders, we deem it appropriate to decide all these appeals by this common judgment.

3. These appeals arise in the backdrop of following facts:-

Allegations in the FIR-

a) People's Education Society, a public charitable trust, runs various institutions, including Dr. Babasaheb Ambedkar College, Mahad. Mr. Suresh Athavale (hereinafter referred to as 'the first informant'), claimed to have been appointed as the principal of said college, and worked in the said capacity during the period 2013 to 2015. In the wake of dispute over the management of the affairs of People's Education Society, Mr. Dhanaji Gurav, allegedly usurped the said position forcibly. Eventually, by an order dated 14.08.2019, the Charity Commissioner decided that Mr. Ashok Talwatkar who claimed to be a trustee, had no concern with the trust. The said decision was upheld by the High Court by an order dated 21.11.2019.

b) The first informant alleges that Shri. S.P. Gaikwad, Chairman of the society appointed him as the principal of said college. Pursuant thereto the first informant took charge on 23.12.2019.

c) On 26.12.2019, at about 7.00 am while he was discussing administrative matters with Smt. Aruna Ajgaonkar and Smt. Chitra Salvi, employees of the college, in his chamber, he

noticed that 30 to 35 persons rushed into college premises amidst shouting slogans "*Dhanajii Gurav Jindabad*". The mob comprised of Dhanaji Gurav, Ashok Talwatkar, Chinmay Gurav (Appellant in Appeal No. 451/2021), Rakesh Sonar, Ganesh Mahadik (Appellant in Appeal No. 193/2021), Sachin Patre, Ramesh Patil (Appellant in Appeal Stamp No. 5352/2020), Anil Jadhav, Rohidas Kashinath Chavan and others.

d) The first informant claimed to have instructed the college staff to lock the grill door leading to the principal's office. The members of the said assembly were armed with deadly weapons. They assaulted Arvind Salvi, Vitthal Gaikwad and Sanjay Hate, who were resisting their entry towards principal's office. The grill door was broken open. Thereafter, according to the first informant Dhanaji Gurav, Gnaesh Mahadik, Sachin Parte, Ramesh Patil and Anil Jadhav and 5 to 7 other bouncers entered into his chamber. The appellant Ganesh Mahadik and Ramesh Patil exhorted the persons to unleash the assault upon the first informant. The accused Dhanaji Gurav attempted a blow by means of iron rod on the head of the first informant. He took defensive action and suffered the blow on his right hand, which was fractured. Rest of the persons also assaulted him. He was dragged out of his office.

Smt. Aruna Ajgaonkar and Smt. Chitra Salvi were also dragged out of his office. While fleeing away the members of the accused party took away the DVR machine which was installed to record the CCTV footage. The first informant thus lodged the report.

4. Pursuant to the aforesaid FIR, crime was registered at C.R. No. 146/2019 for the aforesaid offences. Investigation commenced. Few of the accused came to be arrested. It transpired that the appellants and co-accused had committed alleged offences in pursuance of the conspiracy hatched at Saitej Hotel. The prosecution further alleged that the members of the unlawful assembly comprised of bouncers, who were brought to the college by appellant- Chinmay Gurav. Investigation further revealed that Chinmay Gurav had multiple telephonic conversations with the accused who participated in the actual assault.

5. In the light of aforesaid indictment, appellant Ganesh Mahadik preferred an application for pre-arrest bail being Criminal M.A. No. 104/2020. The appellant asserted that he was working as senior clerk in the said college. Consequent to disputes between the two groups of persons to manage the affairs of People's Education Society, multiple proceedings came to be instituted. Accused Dhanaji Gurav has filed criminal complaints against the first

informant and others bearing C.R. No. 01/2017 and R.C.C. No. 98/2016. The appellant is cited as witness in the said case. The appellant thus asserted that in the dispute between the first informant and accused Dhanaji Gurav, teaching and non teaching staff members are unnecessarily dragged. The implication of the appellant as accused No. 5 in the said C.R. bearing No. 146/2019 is a part of the said exercise.

6. The appellant further asserted that he, being a member of the scheduled caste, could not have been roped in for the offences punishable under SC & ST Act. Even otherwise, there is no material to implicate the appellant for the offences punishable under Penal Code and, in any event, custodial interrogation of the appellant is not warranted.

7. The learned Special Judge was of the view that even if the provisions of offences punishable under Section SC and ST Act were not invoked against the appellant, there was sufficient material to demonstrate the involvement of the appellant in the commission of the offences under the Penal Code and other Acts. The appellant was specifically named as a member of the unlawful assembly and conspirator. Thus, the learned Special Judge by the impugned order

dated 12.10.2020, declined to exercise the discretion in favour of the appellant-Ganesh Mahadik.

8. Ramesh Patil (Appellant in Appeal Stamp No. 5352/2020) also applied for pre-arrest bail by filing Cri. M.A. No. 68/2020, on almost identical grounds. The learned Special Judge by the impugned order dated 31.08.2020 declined to exercise discretion in favour of the appellant in the backdrop of allegations, especially exact role attributed to the applicant.

9. Mr. Chinmay Gurav (Appellant in Appeal No. 451/2021) also preferred Criminal M.A. No. 37/2020. The substance of the said application was that the appellant came to be implicated for the only reason that he is the son of accused Dhanaji Gurav. No specific role of assault has been attributed to the appellant. The allegations of hatching conspiracy and bringing bouncers to perpetrate the offences are vague. The investigation is complete and chargesheet has been filed against the co-accused. At this juncture, custodial interrogation of the appellant is not warranted.

10. The learned Special Judge was not persuaded to grant relief of pre-arrest bail as, in her view, there was sufficient material to incriminate the appellant. It was therefore necessary to provide

opportunity to the investigating agency to interrogate the appellant. Hence, application of the appellant for pre-arrest bail came to be rejected by the learned Special Judge by impugned order dated 26.04.2020.

11. Being aggrieved and dissatisfied with the dismissal of applications for pre-arrest bail, the appellants-applicants are in appeal.

12. Admit. Heard finally with the consent of learned counsel for the parties.

13. We have heard Mr. Sanjiv Kadam, the learned counsel appearing for the appellants, Mr. Yagnik, the learned APP for State and Mr. Nitesh Bhutekar, the learned counsel for Respondent No. 2 in Criminal Appeal No. 193 of 2021 and Appeal Stamp No. 5352/2020. With the assistance of learned counsels we have perused the material on record.

14. Mr. Kadam, the learned counsel appearing for the appellants would urge that the allegations are required to be considered in the backdrop of the fact that the institution is faction-ridden. Various proceedings have been instituted amidst claims and

counter-claims over the right to manage the affairs of the society. The claim of the first informant that he came to be appointed as the principal of college w.e.f. 23.12.2019 is itself contentious. Mr. Kadam, would strenuously urge that the persons, who were allegedly present and sustained injuries in the course of the alleged occurrence, also came to be appointed only after the first informant allegedly took charge of the post of principal on 23.12.2019. This factor is required to be considered in conjunction with the fact that Ramesh Patil and Ganesh Mahadik were the employees of the said college and after the first informant took charge of the post of the principal they were sought to be eased off. The presence of Ganesh Mahadik and Ramesh Patil at the time and place of the occurrence, therefore, according to Mr. Kadam is natural. Conversely, the first informant and the witnesses who represented the informant party have a grudge to implicate these appellants, urged Mr. Kadam.

15. As against this, Mr. Yagnik, the learned APP for State submitted that there is ample evidence to demonstrate that the appellant Ganesh Mahadik and Ramesh Patil were not only the members of unlawful assembly in prosecution of common object of which grave offences were committed, but specific overt acts have been attributed *qua* Ganesh Mahadik and Ramesh Patil. He invited

attention of the Court to the number of injured and nature of injuries suffered by them. Mr. Yagnik, would urge that, therefore, the appellant Ganesh and Ramesh do not deserve the exercise of discretion in their favour. Lending support to the submission of learned APP, Mr. Nitesh Bhutekar submitted that the ferocity of the assault and grievous nature of injuries sustained by the first informant and injured cannot be lost sight of, while considering the prayers for pre-arrest bail.

16. To being with, it is necessary to note that so far as invocation of the provisions contained in SC & ST Act *qua* Ramesh Patil and Ganesh Mahadik, the learned Special Judge, recorded that the applicants appeared to be the members of Scheduled Caste. Nonetheless, even if the bar under Section 18 and 18A of the SC & ST Act does not come into play, having regard to the nature of accusation against the appellants and the material in support thereof, they were not entitled to be released on anticipatory bail.

17. Whether this approach of the learned Special Judge is justifiable?

18. First and foremost, it is imperative to note that the first informant alleged that the mob of 30 to 35 persons barged into the

campus of college. An effort was made to shut the access to office of the principal by locking the grill door. The members of the assailant party broke open the grill door, and charged into his office. On the way, the members of the staff of the college, including Sanjay Hate, Arvind Salvi and Vitthal Gaikwad, were assaulted. What *prima facie* incriminates the appellants Ganesh and Ramesh, at this stage, is the clear and categorical allegation that they were members of the small group of assailants, who entered into the chamber of the first informant along with accused Dhanaji Gurav. Not only the first informant has named appellants Ganesh and Ramesh but has also attributed the specific role that they exhorted other members of the party to beat the first informant.

19. Mr. Kadam, the learned counsel for the appellants made an endeavour to demonstrate that in the statements of witnesses apart from accused Dhanaji Gurav, no other member of the alleged unlawful assembly was named and they were described as 'unknown persons'. The submission does not carry much substance. We have adverted to the FIR in a little detail, on purpose. The first informant spoke about the presence of Smt. Aruna Ajgaonkar and Smt. Chitra Salvi in his chamber, when the incident occurred. Both Smt. Aruna and Smt. Chitra have stated

that the appellant Ganesh and Ramesh were members of the party which accompanied accused Dhanaji Gurav in the chamber of the first informant and assaulted the first informant. Even, Mr. Vitthal Gaikwad, one of the injured has named the appellant Ganesh and Ramesh as the members of the unlawful assembly.

20. At this juncture, it is imperative to note that the injury certificate of the first informant, Sanjay Hate, Arvind Salvi, Vitthal Gaikwad and Mahendra Ghare reveal that each of them had sustained multiple injuries. The first informant, Sanjay Hate, Vitthal Gaikwad and Mahendra Ghare had sustained fractures. In the face of this material, we are of the view that the learned Special Judge was justified in recording that there was adequate evidence to make out *prima facie* offences against the appellant Ganesh and Ramesh. The first informant has attributed a specific role to the appellants. The alleged eye witnesses to the occurrence have specifically named the appellants. At this stage, the medical evidence and circumstantial evidence lends *prima facie* support to the claim of the first informant and the alleged witnesses. In the backdrop of this nature of the material against the appellants, it cannot be said that the custodial interrogation of the appellants is not necessary. Thus, no fault can be found with the refusal to

exercise the discretion in favour of the appellants Ganesh and Ramesh by the learned Special Judge.

21. On the aspect of complicity of appellant Chinmay Gurav, the thrust of the submission on behalf of the prosecution was based on the call detail record which indicated that the appellant Chinmay Gurav had multiple conversations with accused no. 11 Santosh Patil, accused no. 6 Anil Jadhav, accused no. 10 Ramesh Patil and accused no. 4 Ganesh Mahadik, in the days immediately preceding the day of occurrence. The appellant Chinmay allegedly had conversation with accused no. 11 Santosh Patil three times in between 5.33 am to 6.33 am, hours before the occurrence. It was urged that these multiple conversations indicate that the appellant Chinmay Gurav had hired hirelings, and custodial interrogation of the appellant is necessary to uncover the identity of 20-25 unknown persons who were allegedly brought by the appellant and also to recover DVR, which is the vital piece of evidence to fix the identity of the assailants.

22. Mr. Kadam, the learned counsel for the appellant, on the other hand, would urge that no specific role has been attributed to the appellant Chinmay Gurav. There is a strong motive for the first informant and the members of informant party to implicate the

appellant Chinmay, on account of deep rooted enmity with Dhanaji Gurav, father of appellant-Chinmay.

23. Had there been no material to *prima facie* establish the nexus between the appellant- Chinmay and the occurrence, the submission on behalf of the appellant would have merited acceptance. However, it is pertinent to note that in the FIR itself appellant Chinmay was named as one of the members of unlawful assembly. The first informant asserted that the accused Dhanaji Gurav and other named accused were accompanied by unknown persons, who appeared to be the bouncers. The multiple telephonic conversations with as many as four of the named accused in the days preceding to the occurrence and with accused No. 11 Santosh on the very day of the occurrence, at this juncture, cannot be said to be innocuous and inconsequential. In the backdrop of the nature of accusation against appellant Chinmay, especially the indictment that the appellant arranged bouncers to effectuate the object of unlawful assembly, custodial interrogation of the appellant Chinmay appears necessary.

24. Appellant Chinmay Gurav has to encounter another obstacle. The bar contained in Section 18 and 18A under SC and ST Act, evidently operates against Chinmay Gurav. In the light of

aforesaid consideration, it cannot be said that the offences punishable under Section SC & ST Act are not *prima facie* made out. For this reason also, the prayer of the appellant Chinmay Gurav for pre-arrest bail cannot be countenanced.

25. The conspectus of aforesaid consideration and reasoning is that no interference is warranted in the impugned orders whereby the prayer of the appellants for pre-arrest bail came to be rejected. Hence the following order:-

ORDER

1. The appeals stand dismissed.
2. Ad-interim relief, if any, stands vacated.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)

26. At this stage, Mr. Sanjeev Kadam, learned counsel for the appellants prays for continuation of the ad-interim relief granted in Criminal Appeal (St.) No. 5352 of 2020 and No. 193 of 2021 for a period of four weeks. Since we have dismissed the appeals by assigning adequate reasons, we do not find any justification for continuation of the ad-interim relief after dismissal of the appeals. The oral application for continuation of ad-interim relief thus stand rejected.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)