

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 144 OF 2020

1. Gopal Sureshrao Mahalle,
aged about 42 years,
Occupation Farmer-
Up Sarpanch of Revasa,
2. Sudhir s/o Madhukar Giri
aged about 52 years,
Occupation Farmer,
3. Sunil s/o Udhhavrao Giri,
aged about 45 years,
Occupation Farmer

All 1 to 3 resident of Rewasa,
Taluka and District Amravati

...APPELLANTS

VERSUS

1. State of Maharashtra,
Through Police Station Officer,
Walgaon Police Station,
Taluka and District Amravati,
2. Sandip S/o Shamrao Shirsat,
aged about 38 years,
Occupation Business, resident of
Rewasa, Taluka and District Amravati

...RESPONDENTS

Shri M.M. Agnihotri, Advocate for the appellant.
Shri A.M. Kadukar, A.P.P. for respondent no.1/State

CORAM : VINAY JOSHI, J.
DATED : 04/12/2021

ORAL JUDGMENT :

1. Heard. Admit. Heard finally by consent of the parties.
2. The appellants are challenging order of rejection of pre-arrest bail dated 17/02/2020 passed by the Additional Sessions Judge, Amravati in Misc. Criminal Bail Application (MCA) No.96/2020 and sought for grant of pre-arrest protection.
3. It is the informant's case that on 17/01/2020 he went to the school to see cultural program where his son has participated. At that time, all appellants (accused) took him at the back side of the stage and abused him in the name of caste. On the basis of said report, police have registered Crime No.36/2020 for an offence punishable under Sections 323 and 506(2) read with Section 34 of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
4. The appellants' learned counsel primly submitted that contents of First Information Report does not satisfy the essentials to constitute the offence under the Schedule Caste and Scheduled Tribes Act. He would submit that the alleged incident took place at the back

side of the stage. Therefore, it was not within the public view. In the report the name of witnesses have not been stated. The State resisted appeal by filing reply-affidavit. The contents of First Information Report have been stated in brief. Besides that it is contended that during the course of investigation, the statements of eye witnesses are recorded which makes out a case under the provisions of SC and ST Act.

5. The report itself is crystal clear that the alleged incident took place at the back side of stage. Even taking the contents of First Information Report as it stand, it does not spell out that the incident was within public view. Case diary indicates three statements of eye witnesses. Pertinent to note that they were recorded after 10 days from the occurrence. Moreover, two of the alleged eye witnesses never stated about the exact occurrence.

6. The Division Bench of this Court in case of *Pradnya Pradeep Kenkare and Ors. Vs. State of Maharashtra* reported in *2005 (3) Mh.L.J. 368* has ruled that in order to establish the offence punishable under Sections 3(i)(r)(s) of the SC and ST Act dual conditions have to be established i.e. the place of occurrence must be accessible to the public and the occurrence should be in the presence of independent witnesses. The contents of First Information Report fell short to meet

the duel requirement and therefore the statutory bar would not apply.

7. As regards to other facts are concerned. There are allegations of beating by the fists blows and kicks. Nothing is to be recovered for the appellants. Considering the nature of allegations, custodial interrogation is not necessary.

8. In view of that appellants' have made out the case for grant of pre-arrest protection. Hence following order:

(a) Appeal stands allowed.

(b) Impugned order dated 17/02/2020 passed by Additional Sessions Judge, Amravati is hereby quashed and set aside. The impugned order dated 28/02/2020 is hereby made absolute upon same terms and conditions.

(c) Though original informant was served, he chooses to remain absent.

(d) This Court has granted interim protection prior to 1 ½ year, however, there is no complaint about misuse of liberty during said period.

JUDGE