

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

CRIMINAL APPEAL NO. 166 OF 2021
AND
CRIMINAL APPEAL NO. 167 OF 2021

CRIMINAL APPEAL NO. 166 OF 2021

Santosh s/o Tukaram Jadhao
Aged about 62 years,
Occ.- Agriculturist, R/o at Village
Moundhala, Post Mhasla (Bk.), Tq. And
Distt. Buldhana.

... **APPELLANT**

VERSUS

1. State of Maharashtra, through
Police Station Officer,
Police Station Dhad, Tq. And
Distt. Buldhana.
2. Manoj s/o Shaligram Kharat ,
aged about 26 years, Occ.
Agriculturist, R/o at Village
Moundhala, Post Mhasla (Bk.),
Tq. and Distt. Buldhana.

... **RESPONDENTS**

AND

CRIMINAL APPEAL NO. 167 OF 2021

1. Shivaji s/o Santosh Jadhao
Aged about 40 years,
Occ.- Agriculturist,

2. Tanaji @ Kailash s/o Santosh Jadhao,
aged about 35 years, Occupation :
Agriculturist

Both the appellants are R/o at Village
Moundhala, Post Mhasla (Bk.), Tq. And
Distt. Buldhana. (the appellants are in
jail)

... APPELLANTS

VERSUS

1. State of Maharashtra, through
Police Station Officer,
Police Station Dhad, Tq. And
Distt. Buldhana.
2. Manoj s/o Shaligram Kharat ,
aged about 26 years, Occ.
Agriculturist, R/o at Village
Moundhala, Post Mhasla (Bk.),
Tq. and Distt. Buldhana.

... RESPONDENTS

Shri N.B. Kalwaghe, Advocate for the Appellants.
Shri A.M. Deshpande, A.P.P. for the respondent no.1-State.
Shri M.V. Rai, Advocate for Respondent no.2.

CORAM : VINAY JOSHI, J.
DATED : 17/08/2021

JUDGMENT :

Heard learned Counsel appearing for the parties.

2. **ADMIT.** By consent of learned Counsel appearing for the

parties, the appeal is taken up for final hearing.

3. Both these appeals are arising out of Crime No.45 of 2021 registered with Dhad Police Station, District Buldhana for the offence punishable under Sections 294, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(g), 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989(for short 'the SC and ST Act'). Appellant Santosh Jadhao in Criminal Appeal No.166 of 2021 is seeking for pre-arrest bail whilst appellants Shivaji Jadhao and Tanaji Jadhao in Criminal Appeal No.167 of 2021 are seeking for regular bail. Their respective bail applications were rejected by the Trial Court, therefore, these appeals.

4. With the assistance of both sides, contents of First Information Report have been gone into. It appears that there was a land dispute in between the parties since they are neighboring land holders. It is alleged that on 02.03.2021, around 4.00 pm, appellants have tried to make encroachment on the land belonging to the informant. At that time, they have abused the informant in filthy language and also abused in the name of caste and man handled the informant and his mother.

5. Learned Counsel appearing for appellants has primely argued that so far as, appellant Santosh Jadhao is concerned, there is no mention about abusing by him in the name of caste. Moreover, it is argued that the occurrence was in the field, where no independent witness was present. Lastly, it is submitted that, due to land dispute, false allegations have been leveled about intended encroachment. As regards to appellants in Criminal Appeal No.167 of 2021 is concerned, it is argued that they have already faced custodial interrogation, hence, their detention is no more required.

6. Learned A.P.P. for respondent no.1/State as well as Shri M.V. Rai, learned Counsel appearing for respondent no.2/informant resisted both appeals.

7. It is contended that the First Information Report contains sufficient material to constitute the offence punishable under the SC and ST Act. Learned A.P.P. has pointed out a statement of one witnesses namely 'A' dated 23.03.2021, which bears a reference about abuses given by Shivaji Jadhao and Tanaji Jadhao.

8. The criteria for considering the entitlement for pre-arrest bail under special Act, are having distinct feature. There is no allegation against appellant Santosh Jadhao of giving abuses particularly, in the name of caste. Moreover, First Information Report is silent, whether any independent person was present at the time of occurrence. It has been ruled by this Court in the case of Pradnya Kenkare vs. State of Maharashtra 2005(3) Mh.L.J. 368 that in order to constitute the offence punishable under Section 3(1)(r) and 3(1)(s) of the SC and ST Act, both ingredients namely place accessible to and in the presence of public is necessary. Therefore, from the view point of appellant Santosh, there is no *prima facie* material to constitute the offence under Special Act.

9. As regards to appellants Shivaji Jadhao and Tanaji Jadhao are concerned, already they have been arrested and faced custodial interrogation. From the nature of report, it is apparent that, nothing is to be seized at their instance. Having regard to all these circumstances, both appeal deserves to be allowed. Hence the following order :

(a) Criminal Appeal No.166 of 2021 stands allowed.

(i) The impugned order dated 17.03.2021 passed in Criminal

Bail Application No.60 of 2021 by Additional Sessions Judge and Special Judge, Buldhana, is hereby quashed and set aside.

(ii) Ad-interim order dated 08.04.2021 is hereby made absolute on same term and conditions with a further direction to continue to attend the concerned Police Station as directed earlier, till filing of the charge-sheet.

(b) Criminal Appeal No.167 of 2021 stands allowed.

(i) The impugned order dated 31.03.2021 passed in Criminal Bail Application No.71 of 2021 by Additional Sessions Judge and Special Judge, Buldhana is hereby quashed and set aside.

(ii) Ad-interim order dated 08.04.2021 is hereby made absolute on same term and conditions.

JUDGE

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