

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

CRIMINAL APPEAL NO. 248/2021

1. Nitinkumar Anatrao Adhao,
Aged about 34 yrs, Occ. Agriculturist,
 2. Anantrao Ramkrushna Adhao,
Aged about 60 yrs, Occ. Agriculturist,
- All R/o. Pimpri Adhao, Tq. Nandura,
Dist. Buldana.

.... APPELLANTS

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station Nandura,
Tq. Nandura, Dist. Buldhana.
2. Sau. Seema Umesh Ranait,
Aged 29 years, Occ. Household,
R/o. Pimpri Adhao, Tq. Nandura,
Dist. Buldana.

.... RESPONDENTS

Shri Anil Mardikar, Sr. Advocate assisted by Shri V. R. Deshpande, Advocate for appellants.
Shri M. J. Khan, APP for respondent No. 1.
Shri Shantaram S. More, Advocate for respondent No. 2.

CORAM : VINAY JOSHI, J.
DATED : 20.09.2021

JUDGMENT

Heard.

2. **Admit.** By consent of the learned counsel present for the

parties, appeal is taken up for final disposal.

3. In anticipation of arrest in Crime No. 306/2021 registered with the Police Station Nandura, District Buldhana for the offence punishable under Sections 354, 294, 506 of the Indian Penal Code, Sections 3(1)(r), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (short 'SC and ST Act'), the applicants are praying for pre-arrest bail.

4. While claiming protection besides false implication, it is argued that the contents of First Information Report (FIR) does not make out a *prima facie* case under the provisions of SC and ST Act. The contents of FIR dose not disclose that the occurrence took place within the "public view". Moreover, according to the applicants, the major allegations are against co-accused Pawan who is already released on bail. On the other hand, learned Additional Public Prosecutor has submitted that the offence is of serious nature. The informant in her supplementary statement has clarified about her caste. It is stated that the applicants have abused and threatened to the victim to humiliate her and therefore, the offence is made out.

5. The informant and applicants are neighbours. It is informant's case that on 05.06.2021 in the afternoon co-accused Pawan was uprooting the plants from the informant's courtyard. Moreover, co-accused Pawan has outraged her modesty by touching to her person. She stated that thereafter both applicants who are brother and father, co-accused Pawan arrived and abused her in filthy language. They also threatened her for dire consequences. Then the informant stated the third successive incident alleging about threats given by co-accused Pawan.

6. It reveals from the report that the allegations about outraging modesty are against co-accused Pawan. So far as the applicants are concerned, it is alleged that they abused and threatened her. The submission that the contents of FIR nowhere, makes out that the occurrence took place within the "public view" carries substance. As per the report, the occurrence took place in courtyard. There is no mention that any member of public was present at the time of occurrence. This Court in reported case of ***Pradnya Pradeep Kenkar Vs. State of Maharashtra, 2005(3) Mh.L.J. 368*** has taken a view that in order to constitute offence punishable under Section 3(1)(r) both ingredients i.e. occurrence in place accessible to the public and

presence of independent witnesses are necessary. The informant has not stated the actual abused given by the applicants. It *prima facie* reveals that it was dispute between the neighbours on courtyard. At this juncture, on *prima facie* basis, it cannot be inferred that the applicants have threatened the victim only because she is member of Scheduled Castes or Scheduled Tribes. On the very day, the applicant No. 1 has also filed report to the Police alleging that the informant also gave threat and abused them. The question about applicability of the provisions of SC and ST Act requires serious consideration in trial. Considering the nature of accusation, no custodial interrogation is necessary. There is no complaint that the applicants have misused liberty while on interim protection. Having regard to all these facts, following order:-

(I) Appeal stands allowed and disposed of.

(II) The order dated 14.06.2021 passed by the Special Court, Malkapur in Anticipatory Bail Application (APPLN) No. 120/2021 is hereby quashed and set aside.

(III) Ad-interim order dated 28.06.2021 is hereby made absolute upon same terms and conditions.

(IV) In addition to that, the applicants are directed to attend concerned Police Station on every Sunday in between 11.00 a.m. to 02.00 p.m. till filing of charge-sheet or for the period of three months whichever is earlier.

JUDGE

Gohane.