

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

CRIMINAL APPEAL NO. 296 OF 2021

Mr. Harshal Vilasrao Deshmukh
Age: Adult, Occ: Agriculturist,
Residing at: Kaulkhed, Akola.

...APPELLANT

VERSUS

1. State of Maharashtra,
Through Akot File Police Station,
Akola.
2. Satyasheel Shirsat,
Age: Adult,
3. Gajanan Bahakar,
Age: Adult,

Both R/o New Plot, Ward No.4
Village – Ugwa, Akot File,
Tah. And District Akola.

...RESPONDENTS

Shri Nishant J. Patil, Advocate for the appellant.
Shri S.M. Ghodeswar, A.P.P. for respondent no.1/State

CORAM : VINAY JOSHI, J.
DATED : 13/12/2021

ORAL JUDGMENT :

1. Heard. **ADMIT.** By consent, the appeal is taken up for final hearing.

2. This is an appeal challenging the order dated 23/06/2021 passed in Misc. Criminal Application No.572 of 2021 by Additional Sessions Judge, Akola whereby application for grant of pre-arrest bail has been rejected.

3. The appellant is apprehending arrest in Crime No.468 of 2021 registered with Akot File Police Station, District Akola for the offence punishable under Sections 295, 504, 507 read with Section 34 of the Indian Penal Code, Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 3 of the Prevention of Public Property Damages Act, 1984. The State resisted bail by filing reply affidavit. Though original informant as well as victim were served, they remained absent.

4. The report is lodged by one Gajanan Bahakar- a village Sarpanch about occurrence. He stated that on 17/05/2021, he telephonically learnt that appellant along with one unknown person came to Gram Panchayat Office and caused damage to the property. On

receipt of information, informant went to Gram Panchayat Office where he saw that the appellant was damaging the property. The informant stated that at relevant time, witness Satyasheel Shirsat told him that the appellant had abused him in the name of caste and therefore the report.

5. It is argued that the contents of First Information Report, does not disclose the caste of victim. Moreover, the essential ingredients to constitute the offence punishable under Section 3(1)(r) (s) of the SC and ST Act are not made out. It is pointed out that in trial Court, informant appeared and offered his no objection to grant bail. Perusal of First Information Report indicates that the report has been lodged by a person who is not a member of the Scheduled Caste and Scheduled Tribe. It is worthwhile to note that the First Information Report does not state the caste of victim. It reveals that the alleged occurrence took place at the office of village Gram Panchayat. Pertinent to note that the information does not state as to at what time and which place incident of abusing took place. Prima facie there is no material to disclose that the occurrence of abuses took place within the public view and in presence of members of public.

6. As regards to the rest of the allegations are concerned, it is

argued that out of village rivalry, false report has been filed. Considering the nature of allegations, custodial interrogation is not necessary. The essential ingredients to constitute the offence under SC and ST Act are not made out. Having regard to these facts, appellant's liberty can be protected by directing him to join the course of investigation. In view of that following order:

- (a) Appeal stands allowed.
- (b) The impugned order dated 23/06/2021 passed by Additional Sessions Judge, Akola in Misc. Bail Appln. No. 572/2021, is hereby quashed and set aside.
- (c) Ad-interim order dated 23/07/2021 is hereby made absolute upon same terms and conditions.
- (d) The appellant shall continue to attend police station till filing of charge-sheet or for the period of sixty days whichever is earlier.

JUDGE

R.S. Sahare