

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

**CRIMINAL APPEAL NO. 303 OF 2021**

1. Sunil s/o Janrao Padol  
Aged about 47 yrs. Occ. : Agriculturist
  2. Sau. Sharda Sunil Padol  
Aged about 43 yrs. Occ. : Anganwadi Sevika
  3. Baburao s/o Ananda Padol  
Aged about 73 yrs. Occ. : Agriculturist
  4. Ashish s/o Sunil Padol,  
Aged about 24 yrs. Occ. : Private Service
- R/o Domrul Dhad, Tah. & Distt. Buldana

.... **APPELLANTS**

// **VERSUS** //

1. The State of Maharashtra,  
Through P.S.O. P.S. Dhad,  
Distt. Buldana
2. Sau Jijabai w/o Sandu Jadhao,  
Aged about 55 yrs.  
R/o Domrul Dhad, Tah. & Distt. Buldana

.... **RESPONDENTS**

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Shri R.M. Daga, Advocate for Appellants  
Shri A.M. Deshpande, Advocate for respondent No.1/State

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**CORAM : VINAY JOSHI. J.**

**DATE : 16/09/2021**

**ORAL JUDGMENT**

The learned Counsel for the informant was absent on last date as well as today. There is no purpose in keeping the matter pending for no reason. Heard learned counsel for appellants and learned A. P. P. for respondent no.1.

**ADMIT.** By consent of learned Counsel present for parties, Appeal is taken up for final disposal

2. In anticipation of arrest in Crime No.254/2021, registered with Police Station Dhad, District – Buldhana for the offences punishable under Sections 294, 323, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)s, 3(1)u, 3(1)(za)(A) of the Scheduled Castes and the Scheduled Tribes Act, 1989, appellants are claiming pre-arrest protection. The State has resisted bail by filing reply affidavit. Moreover, informant has also filed reply in resistance coupled with certain precedents.

3. On 09/07/2021, the informant lodged report with Police Station regarding occurrence, stating that on that day he along with others, entered into land bearing Block No. 155, where there was a

cremation ground. The informant states that at that time all appellants arrived there, manhandled them and also abused in the name of caste. Moreover, applicants have abused in filthy language and gave threats.

4. The learned Counsel appearing for appellants would submit that the allegations levelled in First Information Report are vague. As per informant's contention all accused gave abuses in chorus and therefore the same cannot be relied. Moreover, it is argued that the contents of F.I.R. do not disclose that the offence took place 'within public view', meaning thereby in a place accessible to public and in presence of independent witnesses. This Court in reported case of **Pradnya Pradeep Kenkar Vs. State of Maharashtra, 2005 (3) Mh.L.J. 368** has taken a view that both the above ingredients have to be satisfied for constituting the offence punishable under the Act. Moreover it is submitted that out of land dispute false case has been filed. Particularly it is pointed out that appellant No.3 is aged person whilst applicant No.2 is staying elsewhere.

5. Perused the decisions relied by the informant, rendered by Supreme Court in cases of: **(1) Neeharika Infrastructure Pvt. Ltd Vs. State of Maharashtra and others** reported in **2021 SCC OnLine SC 315**, **(2) National Campaign on Dalit Human Rights and others Vs. Union of India**

**and others**, reported in **(2017) 2 Supreme Court Cases 432 (3) Pruthvi Raj Chauhan Vs. Union of India** reported in **(2020) 4 SCC 747**. There can be no dispute about the general prepositions laid down in above referred cases. However, it is to be noted that in case of Prathvi Raj Chauhan (supra), it has also been held that, where no prima facie offence is made out as shown in the FIR, in order to prevent miscarriage of justice the statutory bar would not apply. It is argued that there was a trite land dispute and therefore false allegations are levelled against appellants. The appellant has produced a copy of Civil Suit bearing No. RCS No. 61/2013 filed by mother of appellant No.1 relating to the same land bearing Block No. 155.

6. Except the provisions under the Act of 1989, the other offences are bailable. There is no specific allegation against particular accused of giving abuses in the name of caste, but a general statement has been made. Therefore, it is difficult to comprehend that all accused in chorus abused at the same time. The report does not bear reference regarding presence of any independent witnesses. Therefore applicability of provisions of SC ST Act is a matter is in dispute and requires serious consideration. Prima facie there is no material to connect appellants with the offences punishable under Section SC ST Act. Already interim protection has been granted vide order dated 30/07/2021. There is no

complaint about misuse of liberty. Having regard to all these facts appellants' liberty can be protected by putting them on certain terms. Hence the following order.

**ORDER**

- (i) Appeal stands allowed.
- (ii) Impugned order dated 20/07/2021 passed in Criminal Bail Application 209/2021, by Additional Sessions Judge, Buldana, is hereby quashed and set aside.
- (iii) Ad-interim order dated 30/07/2021, passed by this Court is hereby made absolute on same terms and conditions.
- (iv) The appellants are directed to continue to attend the Police Station till filing of charge-sheet or for the period of three months from today, whichever is earlier.

**JUDGE**

*J.Pethe..*