

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

CRIMINAL APPLICATION (APPA) NO. 581 OF 2021 IN CRIMINAL APPEAL
NO. 429 OF 2021

Akash Gangu More and Others Vs. State of Maharashtra and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P.V. Navlani, Advocate for the appellants
Mr. I.J. Damle, APP for the respondent / State

**CORAM : V.M.DESHPANDE, &
PUSHPA V. GANEDIWALA, JJ.**

DATE : 13th OCTOBER, 2021.

This is an application for amendment. By amendment, the appellants seek to incorporate the penal Sections of the Scheduled Caste and Scheduled Tribe Act (Prevention of Atrocities) Act, 1989. Since the amendment is in our view formal in nature, the application can be allowed. The application is allowed. Amendment be carried out forthwith.

CRIMINAL APPEAL NO. 429 OF 2021

On 31/05/2021, the appellants who are the accused No.1 to 5 were arrested in connection with Crime No. 509/2021, registered with Police Station Badnera of Amravati District for offences punishable under Sections 302, 201, 120-B, 364, 212 read with Section 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act and Section 142 of the Bombay Police Act. Mr. P.V. Navlani,

learned counsel for the appellants would submit that they were in police custody remand till 04/06/2021, thereafter, they were taken to magisterial custody. He submitted that on 10/07/2021, the provisions of the Scheduled Caste and Scheduled Tribe Act (Prevention of Atrocities) Act, 1989 were invoked. It is his submission that on 13/08/2021, approval was granted by the Commissioner of Police, Amravati to invoke the provisions of the Maharashtra Control of Organized Crime Act, 1999. It is his submission that thereafter on 20/08/2021, the Investigating Officer moved an application for extension of time to investigate the matter. Similarly, on 25/08/2021, the Public Prosecutor Incharge of the brief also moved similar application. It is his submission that these two applications stands rejected by the order passed by the learned Judge on 27/08/2021.

2. According to the learned counsel for the appellants on 27/08/2021, the Investigating Officer filed challan for the offences punishable under Sections 302, 201, 120-B, 364, 212 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act and under Section 142 of the Bombay Police Act and also Sections 3(2) (v), 3(2) (va) of the Scheduled Caste and Scheduled Tribe Act (Prevention of Atrocities) Act, 1989. He submitted that this particular charge-sheet was filed by the Investigating Officer reserving the Investigating Officer's right to investigate further in view of the earlier rejection of extension of time.

3. According to the learned counsel for the appellants, thereafter on 30/08/2021, the appellants moved an application under 167(2) of the Code of Criminal Procedure for default bail and the said application is rejected by the learned Special Judge / Additional Sessions Judge, Amravati on 30/08/2021.

4. It is the submission of the learned counsel for the appellants that the recitals in the charge-sheet as filed postulates that the Investigating Officer has filed incomplete charge-sheet and therefore, the appellants have indefeasible right to claim default bail.

5. Issue notice to the respondents.

4. Mr. I.J. Damle, learned A.P.P. waives service on behalf of respondent/State.

5. Notice to the respondent No.2 is made returnable after three weeks.

6. The Commissioner of Police, Amravati shall ensure the service of this notice of appeal to the respondent No.2 prior to the returnable date.

JUDGE

JUDGE

MP Deshpande