

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

CRIMINAL APPEAL NO. 54 OF 2022

Gajanan Rohidas Suryawanshi

..APPELLANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. S.J. Salunke, Advocate for appellant

Mr. S.P. Sonpawale, A.P.P. for respondent no.1 – State

Mr. C.T. Jadhav, Advocate for respondent no.2

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CORAM : R.G. AVACHAT, J.

DATED : 03rd MARCH, 2022

PER COURT :

1. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act'). The challenge in this appeal is to an order dated 21st December, 2021 in Criminal Bail Application No. 349 of 2021 passed by the learned Additional Sessions Judge, Majalgaon refusing to grant the appellant anticipatory bail in connection with Crime No. 179 of 2021 registered with Dindrud Police Station, Dist. Beed for the offences punishable under Sections 324, 323, 504 and 506 read with Section 34 of the Indian Penal Code ('I.P.C.') and under Section 3(1)(r) and 3(1)(s) of the Act.

2. Heard. Perused the First Information Report ('F.I.R.') and related papers.

3. Learned A.P.P. and learned counsel for Respondent No.2 – complainant would submit that the allegations in F.I.R. undoubtedly make out the offence/s punishable under the Act, and therefore, there is bar under Section 18 of the Act to grant pre-arrest bail.

4. Learned counsel for the appellant would, on the other hand, submit that the F.I.R. has been lodged seven days after the alleged incident. Veracity of the allegations in the F.I.R. are, therefore, under the clouds of doubt. Offences punishable under the I.P.C. are bailable. He, therefore, urged for allowing the appeal.

5. The F.I.R. has been lodged on 02nd September, 2021 in relation to the incident dated 27th August, 2021. It is the case of the informant that he owns a horse. He lets out the horse for marriage ceremonies. On 27th August, 2021 he had given his horse for marriage ceremony of the daughter of one Uttam Kolse of village Longaon. The informant and his brother – Malhari had, therefore, taken the horse to the village Longaon. By 01.30 p.m., the groom was taken on the horse in the procession. Brass band was being played ahead. When the procession was at the house of one Gaju Patil, father of the groom stopped the procession and inquired with the informant and his brother about their surname. After having realised that both of them belong to scheduled caste, brother of the bride and the applicant herein abused both,

the informant and his brother, over their caste and even said them to have made the occasion inauspicious because of their presence. Both of them assaulted the informant and his brother with stones and bricks. The informant suffered bleeding injuries. Both of them, therefore, rushed to Police Station at Dindrud. The police, however referred them for medical treatment at Majalgaon. Doctor there asked them to go Ambajogai or Aurangabad for better treatment. The informant, however went to Dr. Deshpande's hospital at Majalgaon. He was discharged from the hospital on 29th August, 2021. He, however again suffered due to the assault, and therefore, took treatment at Beed. On discharge from the hospital at Beed, he lodged the F.I.R.

6. True, if we accept the allegations in the F.I.R. as it is, offence punishable under Section 3(1)(r) and 3(1)(s) of the Act may be said to have been made out. Offences punishable under the I.P.C. are all bailable one. The F.I.R. has been lodged on the sixth day of the incident. Even we accept the case of the informant that he was in hospital upto 29th August, 2021, he had still three days' time before the date of actual lodging of the F.I.R. to approach the concerned police station and lodge the report. From the F.I.R. it appears that the informant's brother though was allegedly assaulted, was not an indoor patient. He could have lodged the F.I.R. either within hours or next day of the incident. Delay of five days in lodging the F.I.R. leads this

Court to observe that the allegations as regards abuses over the caste might have been incorporated afterthought so as to make the offence non-bailable. In view of the same, the appeal succeeds. Hence the following order :-

ORDER

- (i) Criminal appeal is allowed.
- (ii) In the event of arrest of the appellant in connection with Crime No. 179 of 2021 registered with Dindrud Police Station, Dist. Beed for the offences punishable under Sections 324, 323, 504 and 506 read with Section 34 of the Indian Penal Code ('I.P.C.') and under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.
- (iii) The appellant shall not tamper with the prosecution evidence.
- (iv) The appellant shall appear before the investigating officer as and when required.

(R.G. AVACHAT, J.)

SSD