

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

**960 CRIMINAL APPEAL NO.511 OF 2022
WITH APEAL/700/2022**

**ARCHANA GANESH KUTE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

Mr. S.S. Thombre, Advocate for the appellants.
Mr.S.W. Munde, APP for the respondent/State.
Mr.K.R. Doke, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 24.11.2022**

PC :-

01. Heard learned Advocate for the appellants. He pointed out that there is dispute between the appellants and their cousins and on that count various civil disputes are pending between the parties. He invited attention to a civil suit filed by one Yamunabai, wherein these persons are the appellants in this appeal. There is counter claim filed by Anil Kute against the cousins. There is also counter claim filed by Yamunabai and Bhagwan against others, wherein these appellants are also defendants. It is stated that there is also order of injunction, wherein the defendants are restrained from interfering with the possession of Anil Kute. He further pointed out that appellant Archana was required to file complaints against the persons from other fractions from Kute family. She was again required to file complaint which was registered as NCR. The informant is working as agricultural labour in the field of Bhagwan Kute. He submits that there is thus reason for the informant to

lodge a false complaint against these appellants. Appellant Bharat had also lodged complaint to the Superintendent of Police on 23.05.2022 requesting to take action against one Shankar Kale, Mangal Kale etc. along with persons from Kute family. It is specifically alleged that Bhagwan Kute has employed Shankar Kale and Mangal Kale with intention to harass the appellants. He thus states that complaint was lodged on 06.06.2022 only at the instigation of Bhagwan Kute and others. The complaint though is about the incident dated 30.05.2022, which is lodged on 06.06.2022 and there is no explanation for the delay. Even in column 8 of the FIR, there is no reason assigned for the delay. He again invited attention of this Court to complaint dated 07.05.2022 filed by appellant Archana against Bhagwan Kute. He, thus, submits that case is totally false case and is lodged only because of enmity between the parties. He further submits that the alleged incident has taken place in the field and cannot be said to be a public place.

02. As against this, learned Advocate for respondent No.2 submits that respondent No.2 has filed affidavit-in-reply. He pointed out that in the said incident, respondent No.2 received fracture injury. She had been to police station immediately after the incident. However, on that day, police only referred her to Civil Hospital. He produced on record photocopy of letter dated 30.05.2022 by police officer addressed to Medical Officer, Rural Hospital, Bhoom. He has produced on record patients' register, receipt of payment made to the hospital and the injury certificate issued by the District Hospital, Osmanabad on discharge card, since she was referred by the Rural Hospital to the District Hospital on discharge. It is seen that respondent No.2

was discharged on 05.06.2022. He, thus, submits that it is for this reason, the FIR could not be lodged immediately. It is further submitted that even on 06.06.2022 the police official was not ready to take FIR under the influence of the appellants. It is only after she made complaint to the Superintendent of Police, police have registered the offence. It is submitted that it is not only that the informant is insulted in the name of caste but she was assaulted and received fracture injury. From the utterance of the appellants, it is clear that the words were intentionally uttered so as to cause insult. There is specific allegation against, Ganesh, Archana and Bharat. He further submits that since the offence is made out, bar under section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act clearly attracted.

03. Learned APP produced police papers. From the police papers, it appears that there are other eye witnesses, who are independent and belonging to open category and their statements support the informant.

04. At this stage, learned Advocate for the appellants cited a judgment in the case of **Hitesh Verma vs The State Of Uttarakhand** reported in **AIR 2020 SC 5584**. The Hon'ble Apex Court discussed the place within public view and public view as appearing in section 3(1)(r) of the Atrocities Act. Therefore, the statement of the learned Advocate for the appellants that the incident has occurred at the field and therefore was not within public view cannot be accepted.

05. When the offence is, prima facie, made out, it is not open for the

Court to entertain the application on merits and bar under section 18 of the Atrocities Act is clearly applicable. The Hon'ble Supreme Court in the case of Vilas Pandurang Pawar and another Vs. State of Maharashtra and Ors. reported in (2012) 8 SCC 795 held that when the allegations are made under the Atrocities Act, bar under Section 18 is clearly attracted and no application for anticipatory bail can be considered. The latest judgment in the case of Prathvi Raj Chauhan Vs. Union of India and others reported in (2020) 4 SCC 727, wherein it is held that once offence is made out under the Atrocities Act, power under Section 438 of the Code of Criminal Procedure cannot be invoked and no application for anticipatory bail can be considered.

06. Thus, keeping in mind the ratio of these two judgments and looking at the FIR, prima facie, it is clear that offence under the Atrocities Act is made out and the bar under section 18 is clearly applicable. The allegations are required to be taken at their face value. This Court cannot entertain appeal for anticipatory bail. Hence, both the appeals are dismissed.

07. Learned Advocate for the appellants prays for continuation of the interim relief, which is running since 25.07.2022. Learned Advocate for respondent No.2 strongly opposed the prayer.

08. The interim relief is continued for a period of three weeks from today.

[KISHORE C. SANT, J.]