

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

904 CRIMINAL APPEAL NO.637 OF 2022

**MANMATH VALJANATH PATRE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Pathan Hamzakhan I., Advocate for the appellant
Mr. Nayana Patil, Advocate for the appellant (appointed)
Mr. S. W. Mundhe, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 21st DECEMBER, 2022

P. C.

1. Heard the learned advocate for the appellant, learned APP for the State and learned advocate for the respondent No.2 (appointed).

2. The appellant is seeking bail in the event of his arrest in connection with FIR No.0249/2022 dated 21-06-2022 registered with Akhada-Balapur Police Station, Dist. Hingoli for the offences punishable under Sections 324, 504, 506, of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3 (2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act lodged by respondent No.2.

3. Allegations in the FIR are that on 18-06-2022 the

informant and his wife alongwith children were coming back to home after finishing agricultural work at around 08.15 pm, the appellant abused them in the name of caste and insulted him. He further assaulted with the iron rod. The informant because of injuries fell unconscious. He went to the police station. After that Police referred him to the Government Hospital at Balapur. He was further referred to Government Hospital, Nanded. Thereafter the informant lodged a report with the police.

4. The appellant approached the learned Sessions Court by filing the application seeking bail in the event of arrest & same came to be rejected and therefore, now he has filed this appeal. The main contention of the appellant is that the incident as alleged is not witnessed by any one. Considering the time i.e. 08.15 pm there was no one on the street and thus offence cannot be said to have taken place in public view. In support of his contention he relied upon various judgments passed by this court as well as by the Hon'ble Supreme Court. He submits that in this case offence cannot be said to have been taken place in a public view.

5. So far as the allegations of abusing in the name of caste there is no serious dispute. The learned advocate for the appellant in his support relied upon few judgments. First judgment relied upon by the appellant reported in *2005 (3) Mh. L.J. 368 in the case of Pradnya Pradeep Kenkare and another Vs*

State of Maharashtra wherein the division bench of this court has considered as to what is meaning of within the public view. Second judgment is reported in *2020 (5) Mh LJ (Cri) 123 in the case of Papu Ashok Supekar and others Vs State of Maharashtra* and others wherein this court has considered as to what is public view and public place. The court has considered that the expression within public view expressed that the offence committed in any place should be visible or audible to the public. These observations are made on considering the judgment by the division bench in the case of Pradnya (supra). The another Judgment of the division bench reported in *2021 (2) Mh LJ (Cri) 402 in the case of Dr. Shriram S/o. Madhusudan Bhuskute Vs State of Maharashtra and another*, wherein division bench of this court has again considered as to what is public view. In that case allegation was made against principal of college which took place in the office of principal where some staff members were present. It was held that in the said place of occurrence was a place within a public view. Further in the judgment reported in *2006 ALL MR (Cri) 3197 & in the case of Balu Bajirao Galande Vs State of Maharashtra and anr* wherein the court has considered the expression 'public view' as appearing in Section 3(1) (x) of the Atrocities Act. This court has held that the public view means that public persons present should be independent and impartial and not interested in any of the parties. Thus it is held that there has to be some members of public present at the time of commission of alleged offence.

6. Learned advocate for the appellant has further relied upon the judgment reported in *2011 (11) SCC 259 in the case of Asmathunnisa Vs State of Andhra Pradesh and others*. The Hon'ble Apex Court has held that public view means public must view the persons being insulted for which the said persons must be present and no offence under this section is attracted if the persons are not present.

7. Considering the above judgments, it is seen that all the judgments are in respect of Section 3(1)(r) & 3(1)(s). In this case, the allegations are also under Section 3(2)(va). To see that whether the case under Section 2(va) is made out, it needs to be seen that offence mentioned in the schedule. Considering this certainly a case is made out as allegations are also under Sections 324, 504 & 506 are made out and thus it is not necessary to go into whether the allegations under 3(1)(r) & (s) are made out or not. It is sufficient for the present that allegations are made out under Section 3 (2)(va) of the Act. Considering that the offence is made out under the Atrocities Act.

8. When an offence is made out under the Atrocities Act this court needs to consider effect of bar under Section 18 of the Act. The Hon'ble Apex Court has already held in the judgment reported in *(2012) 8 SCC 795 in the case of Vilas*

Pandurang Pawar and another Vs State of Maharashtra and ors. that if offence is made out under the Atrocities Act bar is clearly attracted. In another case of *Prithvi Raj Chauhan Vs Union of India and others reported in (2020) 4 SCC 727* it is again held that bar under Section 18 operates when an offence is made out under the said Act. In view of these judgments this court finds that bar under Section 18 is clearly attracted and thus this court cannot grant a relief of anticipatory bail to the appellant. In this way of the matter, this court finds that there is no merit in the appeal and appeal is therefore, dismissed.

9. Learned advocate for respondent No.2 appointed is entitled to receive fees as per the rules.

10. At this stage the learned advocate for the appellant prays for interim relief which is already granted in his favour to continue for a period of four weeks.

11. The learned advocate for the respondents have objected this prayer.

12. However, looking to the fact that the interim relief is continued till 28-09-2022, same shall be continued for further period of four weeks from today.

[KISHORE C. SANT, J.]