

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

CRIMINAL APPEAL NO.475 OF 2021

1. Manohar @ Balu s/o Changdev More
2. Digambar @ Raju s/o Laxman More ... **APPELLANTS**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Mr. R.R. Karpe, Advocate for appellants
Mr. S.P. Sonpawale, A.P.P. for respondent No.1.
Mr. R.C. Bora, Advocate holding for
Mr. R.B. Ade, Advocate for respondent No.2.
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CORAM : R. G. AVACHAT, J.

DATE : 25th FEBRUARY, 2022.

ORDER :

This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act for short). The challenge herein is to an order rejecting application of the appellants for anticipatory bail.

2. Heard. Perused the First Information Report (F.I.R.) and the related papers. The F.I.R. has been lodged by one Smt.Nanda. It has been lodged within hours of the incident on 2/9/2021. It is averred in the F.I.R. that, land Gut

No.310 belongs to her. She has also some land in Gut No.307. Both the appellants are of her acquaintance as they are from the same village. By 2.00 p.m. on 2/9/2021, the informant and her husband were in their field Gut No.310. Cattle of Balu entered the informant's field. She, therefore, asked him to control the cattle and ensure that they would not enter her field. He, therefore, abused her in filthy language. The informant's husband also asked him as to why did he allow his cattle to enter his field for grazing. Appellant Raju arrived. Both the appellants abused the informant and her husband over their caste. Appellant Balu gave a slap on the face of the informant and assaulted on her nose with a stone. When her husband intervened, he was beaten with fistiuffs. Both of them then left again abusing the informant and her husband over their caste.

3. Learned counsel for the appellants would submit that, the offences punishable under the Indian Penal Code are allailable one. So far as abusing the informant over caste, both the appellants are alleged to have had abused her in chorus. The same is not possible. Since the offences under Indian Penal Code areailable one, provisions of the Atrocities Act have been invoked to ensure the appellants' arrest.

According to him, it might be a case of petty quarrel. No third person was around. The incident could not be said to have occurred in a public view. The witness Babu Pasha allegedly arrived on the scene post happening of the incident. He, therefore, urged for allowing the appeal.

4. The learned A.P.P. for respondent No.1 - State and the learned counsel for the respondent No.2 informant would, on the other hand, submit that the allegations in the F.I.R. make out an offence under the Atrocities Act. In view of bar under Section 18 of the Act, no pre-arrest bail could be granted. The F.I.R. was lodged within hours of the incident. The informant has no reason to lodge a false complaint. According to them, it is not an impossible thing for both the appellants to abuse the informant and her husband over their caste simultaneously. The allegations in the F.I.R. in that regard cannot be taken literally. They, therefore, urged for dismissal of the appeal.

5. The incident took place way back in September 2021. Over five months have passed thereafter. The offences punishable under the Indian Penal Code are all bailable one. The only non-bailable offence attributable to the appellants herein is as to abusing the informant and her husband over

their caste. Although the incident took place in a field, no third person was around. Witness Bablu Pasha arrived on the scene post incident. Admittedly, his statement has not been recorded so far. It is informed by learned A.P.P. that he could not be traced. He might have been pressurised by the appellants herein. Be that as it may. Since no third person was around when the alleged offence took place, the veracity of the allegations regarding the appellants to have abused them over their caste becomes skeptical. In the fitness of things, I am inclined to allow the appeal. Hence the order :

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The impugned order dated 18/9/2021, passed by Additional Sessions Judge, Shrigonda in Criminal (Bail) M.A. No.543/2021 is quashed and set aside.
- (iii) In the event of arrest of the appellants in connection with F.I.R. bearing Crime No.0368/2021, registered with Belvandi Police Station, Tq. Shrigonda, District Ahmednagar for the offences punishable under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the

appellants be released on bail on their executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) each with one surety in the like amount.

(iv) The appellants shall not tamper with the prosecution evidence and shall appear before the investigating officer as and when required.

**(R. G. AVACHAT)
JUDGE**

fmp/-