

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

CRIMINAL APPEAL NO. 635 OF 2021

1. Dnyaneshwar Khandu Khandagale
Age: 44 years, Occu.: Agri.,

2. Vandana Dnyaneshwar Khandagale
Age: 44 years, Occu. Household,

Both R/o Yesgaon No.1, Tq. Khuldabad,
Dist. Aurangabad

..APPELLANTS

VERSUS

1. State of Maharashtra
Through Khuldabad Police Station,
Dist. Aurangabad

2. Vilas Sandu Avhad
Age: 27 years, Occu.: Labour,
R/o Yesgaon No.1, Tq. Khuldabad,
Dist. Aurangabad

..RESPONDENTS

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Mr. N.S. Ghanekar, Advocate for appellants
Mr. R.B. Bagul, A.P.P. for respondent no.1 – State
Mr. T.S. Lodhe, Advocate for respondent no.2

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**CORAM : R.G. AVACHAT, J.
DATED : 24th JANUARY, 2022**

PER COURT :

1. Heard.

2. The challenge in this appeal is to order refusing anticipatory bail to the appellants herein in connection with C.R. No. 400 of 2011 registered

with Khultabad Police Station, Dist. Aurangabad for the offences punishable under Sections 447, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r) and 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act').

3. Learned counsel for the appellants would submit that even if we accept the allegations in the F.I.R. as it is, the alleged offence did not take place in the public view and, therefore, Sections 3(1)(r) and 3(1)(s) of the Act do not get attracted. In support of his submission, he took this Court through the allegations in the F.I.R.

4. Learned A.P.P. and learned counsel for Respondent No.2 - informant would, on the other hand, rely on the statements of the witnesses to submit that the alleged offence was committed by the appellants herein in presence of the witnesses and as such, it was in the public view and in view of Section 18 of the Act, the appellants shall not be entitled for anticipatory bail.

5. Considered the submissions advanced. Perused the F.I.R. and the documents relied on. This Court is concerned with the later part of the F.I.R., wherein it has been averred that the informant and his mother went to the house of the appellants herein. That time both the appellants abused them over their caste. It has also been averred in the F.I.R. that the appellants even

directed them to leave from their residence. As such, the alleged incident did take place in the house of the appellants herein. From the averments in the F.I.R. it is not made clear that third persons were present in the house. True, there are statements of four persons, who claim to have been present outside the house and heard the appellants abusing the informant and his family members over their caste. Those statements have been recorded two days after registration of F.I.R. In the F.I.R., no presence of independent person, when the alleged offence did take place, was made out. Possibility that these witnesses are got up cannot be ruled out in view of the fact that there is dispute between the appellants on one hand and the informant and his family members on the other over a plot of land. Since from the allegations in the F.I.R. the offence appears to have not been committed in public view, this Court is inclined to allow the appeal. Hence the following order :-

ORDER

- (i) Criminal appeal is allowed.
- (ii) Order impugned is hereby set aside.
- (iii) In the event of arrest of the appellants in connection with C.R. No. 400 of 2011 registered with Khultabad Police Station, Dist. Aurangabad for the offences punishable under Sections 447, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r) and 3(1)(s) of Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they be released on executing P.R. bonds in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

(iv) The appellants shall not tamper with the prosecution evidence.

(v) The appellants shall appear before the Investigating Officer as and when required.

(R.G. AVACHAT, J.)

SSD