

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.182 OF 2022

Vishal s/o Shrikrushna Mahalle
aged 32 years, Occ: Agriculturist,
R/o Shelu Khurd, Tq. Barshitakli,
Distt. Akola (P.S. Barshitakli).

.... **APPELLANT.**

// VERSUS //

1. State of Maharashtra,
through P.S.O. Police Station,
Barshitakli, Distt. Akola.

2. Amol s/o Ananda Mohod,
aged 37 years, Occup- Agriculturist,
R/o Mahatma Fule Nagar, Barshitakli,
Tq. Barshitakli, Distt. Akola.

.... **RESPONDENTS.**

Shri N.L. Jaiswal, Advocate for Appellant.
Ms S. Jachak, A.P.P. for the respondent No.1/State

**CORAM : ANIL S. KILOR, J.
DATED : 02nd MAY, 2022.**

ORAL JUDGMENT :

1. I have heard learned counsel for the appellant and the learned A.P.P. for the respondent No.1/State. None for the respondent No.2, though served.

2. **ADMIT.**

3. This appeal is arising out of the rejection of pre-arrest bail to the appellant in Crime No.53 of 2022 registered with Police Station Barshitakli, District : Akola for the offence punishable under Section 506 of the Indian Penal Code and Sections 3(2)(va), 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act'), vide order dated 19.03.2022 passed by Additional Sessions Judge, Akola in Misc. Criminal Application No.139 of 2022.

4. Shri Jaiswal, learned counsel for the appellant submits that the alleged incident is dated 23.01.2022, whereas the First Information Report (FIR) was lodged on 01.02.2022. He submits that the dispute has arisen out of the commercial transaction about the land and to pressurize the appellant, he has been falsely implicated in the alleged offence.

5. The learned counsel for the appellant submits that there is nothing to show the involvement of the appellant in the alleged offence. He submits that the alleged incident was not happened within public view and therefore, he submits that the bar under Section 18 of the Atrocities Act would not come in the way of the appellant to seek pre-arrest bail. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India, in the case of Swaran Singh Vs. State¹ and the judgment of the Co-ordinate Bench of this Court, in the case of Papu Ashok Supekar and others Vs. State of Maharashtra and others².

6. On the other hand, Ms Jachak, learned APP opposes the present appeal and submits that as there are witnesses to the incident, the bar under Section 18 of the Atrocities Act would apply to this case.

7. To consider the rival contentions of the parties, I have perused the case diary and also the contents of the FIR.

1 2009 (2) Mh.L.J. 28

2 2020 (5) Mh.L.J. (Cri) 123

8. The Hon'ble Supreme Court of India in the case of *Swaran Singh Vs. State* (supra), while dealing with the expression 'Public View', has observed thus:

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a 'Chamar') when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression 'place within public view' with the expression 'public place'. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

9. The Co-ordinate Bench of this Court in the case of *Papu Ashok Supekar* (supra) has observed thus:

"12. A plain reading of this provision would indicate that the provision under Section 3 is attracted only when the offences are committed by a person not being a member of Scheduled Caste or a Scheduled Tribe against a member of Scheduled Caste or a Scheduled Tribe. It is also pertinent to note that to constitute offence under Section 3(1) (r), insult or intimidation must be intentional with an intent to humiliate the member of Scheduled Caste or a Scheduled Tribe. Furthermore, to constitute offences under these

Sections 3(1)(r) and (s), the incident must be in a place within public view. The expression "within public view" is not synonymous with the expression "public place". The expression "within public view" connotes that the alleged offence committed in any place should be visible / audible to the public. This has been held by the Division Bench of this Court in Pradnya Pradeep Kenkare v/s. State of Maharashtra 2005 (3) Mh.L.J. 368 and V.P. Shetty v/s. Sr. Inspector of Police and anr. 2005(3) Mh.L.J. 1006. Reiterating this view, the Division Bench of this Court in Dr. Manali w/o. Makarand Kshirsagar v/s. State of Maharashtra, 2020 (3) Mh.L.J. (Cri) 127 in Criminal Application No.477 of 2019, has held that "thus it is clear that incidence of insult or intimidation has to occur in a place accessible to and in presence of public and presence of both these ingredients is absolutely necessary to constitute offence under the said provision of law."

10. In the teeth of the above referred observations, if the material available in the case diary is perused, it will be revealed that except the statements of the friends of the complainant, there is nothing to corroborate the case of the prosecution in relation to the offence under the provisions of the Atrocities Act.

11. Thus, it is clear that the incident of insult or intimidation *prima facie* did not occur in presence of public and as such the pre-requisite to constitute the offence under the provisions of the atrocities Act, under which the offence is registered in this case i.e. under Sections 3(1)(r) and 3(1)(s) is not

present and therefore, the bar under Section 18 of the Atrocities Act would not come in the way of the appellant.

12. The offence under the Indian Penal Code is not grave as to warrant custodial interrogation and accordingly, I am of the opinion that this appellant needs to be released on pre-arrest bail. Accordingly, I pass the following order:

- i) The Criminal Appeal is **allowed**.
- ii) The order dated 19/03/2022 passed by learned Additional Sessions Judge, Akola in Misc. Criminal Application No.139 of 2022, is hereby quashed and set aside.
- iii) It is directed that in the event of arrest of the appellant in Crime No.53 of 2022 registered with Police Station Barshitakli, District : Akola for the offence punishable under Section 506 of the Indian Penal Code and Sections 3(2)(va), 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he shall be released on bail on his furnishing P.R. Bond of Rs.15,000/- with one solvent surety in the like amount.

- iv) The appellant shall attend the police Station on 09.05.2022, 10.05.2022 and 11.05.2022 in between 10.00 a.m. to 12.00 noon and thereafter, as and when his presence is required.
- v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence.
- iv) The appellant shall not leave the jurisdiction of the concerned police station without permission of the Court.

The Criminal Appeal stands **disposed of** accordingly.

(ANIL S. KILOR, J)

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