

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION (APPLN) NO.51 OF 2021**

(KISHOR PRALHAD GAJBHIYE....VS.. STATE OF MAH. THR. PSO PS YAVATMAL CITY & ANR.)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri A.D.Tote, Advocate for Applicant.  
Shri S.D.Sirpurkar, A.P.P. for Non-applicant No.1/State.  
Shri Atharva S. Manohar, Advocate for Non-applicant No.2.  
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**CORAM : ANIL S. KILOR, J.**  
**DATED : MARCH 24, 2022.**

Heard.

2. This is an application filed under Section 439(2) of the Code of Criminal Procedure for cancellation of anticipatory bail of the non-applicant No.2, who was granted pre-arrest bail vide order below Exh.1, dated 06/05/2021 by the learned Additional Sessions Judge, Yavatmal in Criminal Bail Application No.100 of 2021.

3. The only ground, which is argued by the learned counsel for the applicant, is that the offence punishable under Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Atrocities Act") was subsequently added. Whereas, on 02/04/2021 the FIR was registered only under Section 306 of the Indian Penal Code.

4. It is submitted that the application, therefore, ought to have been amended by the non-applicant No.2, however, no such amendment was carried out and while granting bail, the learned Sessions Judge has not considered the said fact. He, therefore, prays for cancellation of the bail.

4. The learned A.P.P. submits that as it was revealed subsequently that the deceased was belonging to Scheduled Caste, Section 3(2)(va) of the Atrocities Act was added.

5. Shri Manohar, learned counsel for the non-applicant No.2 has drawn attention of this Court to the findings recorded by the learned Sessions Judge in relation to the offence subsequently added under the provisions of the Atrocities Act and it is submitted that as there are observations recorded on the said point, by the learned trial Court, it cannot be said that the Court has not considered the said fact.

6. To consider the contentions raised by the respective parties, I have perused the record and the impugned order below Exh.1, dated 06/05/2021.

7. I find substance in the submission made by the learned counsel for the non-applicant No.2 that the Court has taken into consideration the fact that subsequently the offence under the provisions of the Atrocities Act was added. Paragraph No.8 of the impugned order is relevant for this purpose, which reads thus:

*“8. It appears from the police papers that after recording the statements of informant on 15/04/2021 the offence under the provision of SC and ST (Prevention of Atrocities) Act came to be added. It is submitted that the FIR is totally silent to the fact that the present applicant accused is not the member of S.C. of S.T. and present applicant aware or had knowledge that deceased belongs to S.C. or S.T. category. Also FIR does not show that there was any intention or mesne rea to humiliate the deceased on her caste within public view. According to him the absence of such averments in the FIR will have serious impact as to allegation to constitute the offence. In support of his contention he placed his reliance on the reported case reported in – 2019 ALL MR (Cri) 2974 Kedarsingh Dharma Patil & Anr. Vs. The State of Maharashtra & Anr., 2019 ALL MR (Cri) 2983, Nitin Sampatrao Maske & Anr. Vs. State of Maharashtra & Anr. and 2019 ALL MR (Cri.) 2825, Kiran Madhukar Ingle Vs. The State of Maharashtra & Anr. On perusal of the FIR I found substance in the submission of learned counsel for the accused that there is no prima facie affirmation or say in the FIR that accused is not member of S.C. or S.T. Also FIR silent that there was any intention or mesne rea to humiliate the deceased on her caste within the public view and she has committed the alleged act only because deceased belongs to S.C. to S.T. category.”*

8. As the learned trial Court has considered the said fact and has recorded its findings, I do not find any merit in the submission of the learned counsel for the applicant that the learned trial Court has not taken into consideration the fact of subsequent addition of the offence under the Atrocities Act.

8. In that view of the matter, I pass the following order:

The application is **rejected**.

**JUDGE**

*RRaut..*