

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

Criminal Appeal No. 546 of 2022

Ramesh Dayaram Rathod and others

Versus

The State of Maharashtra, through Police Station Officer, Pusad (Gramin),
Tahsil Pusad and Dist. Yavatmal and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.M.Pande, Advocate for the appellants.

Shri N.R.Rode, APP for the Respondent/State.

Ms. A.P.Murrey, Advocate (appointed) for respondent no.2.

CORAM : ANIL S. KILOR, J.

DATED : 21st NOVEMBER, 2022.

This is an appeal under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for grant of anticipatory bail in Crime No. 412 of 2022, for the offence punishable under Sections 354, 324, 323, 294, 147, 148, 149, 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short referred as 'Atrocities Act').

2. After going through the First Information Report, it can be seen that the complainant and her

family members were playing D.J. and thereupon the applicant no.1 came there and asked the family members of the complainant to stop playing D.J. It is further alleged that at the relevant time the applicant no.1 abused the family members of the complainant on their castes and thereafter call the other accused person and assaulted the complainant and her family members.

3. After going through the injury caused to the complainant and her family members, it can be seen that injuries were blunt trauma.

4. As far as the allegations in respect of Atrocities Act are concerned, it appears that the applicant no.1 asked a question whether the family of the complainant belongs to Mahar caste and why they are playing song of Mahar caste.

5. On the face value of the statement of allegations, it can be seen that a question was asked about the caste and not that they abused on caste.

6. Moreover, this allegation is against the applicant no.1 only, whereas, there are no other allegations against the other accused persons that they abused the complainant and her family members on caste.

7. The case diary further shows that the incident took place not because the complainant

belongs to Scheduled Caste but the reason as referred above. Thus, it cannot be said that there was an intention behind alleged incident to humiliate or insult the complainant or her family members on the count of their caste.

8. Further from the case diary it can be seen that there was no common intention as the incident was not pre-meditated. In the circumstances, it is doubtful whether Section 149 of Indian Penal Code will apply to the present case.

9. Thus, considering the material collected by the Investigating Officer during the investigation, I am of the opinion that *prima facie*, no case is made out as far as Atrocities Act is concerned under Sections 3(1)(r) and 3(1)(s) of Atrocities Act of 1989 and therefore, the bar under Section 18 of the Atrocities Act of 1989 would not come in the way of the applicants to seek anticipatory bail.

10. In the circumstances, though learned Additional Public Prosecutor and learned counsel for the non-applicant no.2 opposed the present appeal, in view of the above referred observations, I am of the opinion that the custody of the applicants is not necessary and purpose will be served if some stringent conditions are imposed while granting anticipatory bail

to the applicants. Accordingly, I pass the following order.

- i. Criminal appeal is allowed;
- ii. The order below Exh.1 dated 8th August, 2022 passed by the learned Additional Sessions Judge, Pusad, Dist. Yavatmal in Misc. Criminal Application No. 281 of 2022 is hereby quashed and set aside;
- iii. The order dated 20th September, 2022 is hereby confirmed with modification that the applicants shall attend the concerned police station from **28th November, 2022 till 5th December, 2022** between 10 am to 12 noon and thereafter as and when their presence is required.
- iv. The applicants shall not enter into the jurisdiction of village Karla, Taluka Pusad, Dist. Yavatmal till filing of the chargesheet.
- v. The fees of Ms. Archana P. Murrey, appointed advocate be quantified as per Rule.

[ANIL S. KILOR, J.]

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