

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

CRIMINAL APPEAL NO. 585 OF 2019

APPELLANT:

Ori. Applicant

Yogesh s/o Ganesh Gawande,
Aged about 34 years, Occu: Labourer,
R/o Mundgaon, Tah. Akot, District Akola.

..V E R S U S..

RESPONDENTS

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| 1. | State of Maharashtra,
through Police Station Officer,
Police Station Akot City, Tah. Akot,
District - Akola. |
| 2. | Pujjya Bhante Vangis Thero,
Aged about 48 years, R/o at present
residing at Mukrunna Bouddha Vihar,
Tandur Wadi, Tah. Akot, District Akola. |

Complainant

And permanent resident of
Mundwadi, Jay Sector M-02, Aurangabad,
Tah. and District Aurangabad.

Shri J.B. Gandhi, counsel for the Appellant.

Shri V.A. Thakare, APP for the Respondent No.1.

CORAM : ANIL S. KILOR, J.

DATE : 24th March, 2022

ORAL JUDGMENT :

1. Heard learned counsel for the appellant and learned APP
for the respondent No.1/State.

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2. **ADMIT.**

3. This appeal is arising out of rejection of application filed by the applicant for grant of anticipatory bail vide order below Exhibit No.1, dated 16/08/2019 passed by Additional Sessions Judge, Akot in Misc. Criminal Application No. 192/2019.

4. Shri J.B. Gandhi, learned counsel for the appellant submits that co-accused Amar Vilas Dahibhat was already released on bail by this Court, vide order dated 07/03/2022. He is therefore, praying for parity.

5. Shri J.B. Gandhi, learned counsel for the appellant further submits that even if the allegations made in the FIR are taken on its face value, no offence attracts under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocities Act'), particularly in absence of the case of the prosecution that the alleged act was committed by the appellant only on the ground that the complainant belongs to Scheduled Caste. He, therefore, submits that as *prima-facie*, no case

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is made out against the appellant under the provisions of the Atrocities Act, bar under Section 18 of the Atrocities Act will not attract in this case.

6. On the other hand, learned APP strongly opposed this appeal and submits that the contents of the FIR are sufficient to show that the provisions of the Atrocities Act attract in this case. He, therefore, prays for rejection of this appeal.

7. I have perused the case diary and also contents of the FIR.

8. The contents of the FIR show that the appellant and the complainant were not knowing each other and the quarrel took place at the Fuel Station. It is not the case of the prosecution that the applicant was acquainted with the complainant and he was knowing the caste of the complainant. Even, there are no allegations that knowing the fact that complainant belongs to Scheduled Caste, the applicant had committed the alleged crime. In absence of sufficient material available on record, *prima facie*, I my opinion

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that there is no incriminating material available on record against the applicant which would attract the offence under the Atrocities Act. In the circumstances, bar under Section 18 would not apply in this case.

9. This Court, has already granted anticipatory bail to one of the co-accused namely Amar Vilas Dahibhat on 07/03/2022 in Criminal Appeal No. 587/2019. In the circumstances, the appellant is entitled for grant of pre-arrest bail. Accordingly, I pass the following order:

- a] The Appeal is allowed.
- b] The order dated 16/08/2019 passed below Exhibit No.1 by the learned Additional Sessions Judge, Akot in Misc. Criminal Application No. 192/2019, is hereby quashed and set aside.
- c] The order dated 23/08/2019, granting ad-interim anticipatory bail is confirmed.

d] The applicant shall attend the concerned police station as and when his presence is required.

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

[ANIL S. KILOR, J.]

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