

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

CRIMINAL APPEAL NO. 12 OF 2023

Gajendra @ Gajanan Pandurang Bhilwande
and others

.. Appellants

Versus

The State of Maharashtra and others

.. Respondents

Mr. Rajendra Deshmukh, Senior Advocate a/w Smt. Ashwini
Sahasrabudhe i/by Mr. Devang Deshmukh, Advocate for the Appellants.
Mr. P. N. Kutti, APP for Respondent Nos. 1 and 2.
Mr. U. B. Deshmukh, Advocate for Respondent No. 3.

CORAM : KISHORE C. SANT, J.

DATED : 23rd JANUARY, 2023.

P. C. :-

. Heard learned senior advocate for the appellants, learned A.P.P.
and learned advocate for respondent No. 3.

2. This is an appeal seeking bail in the event of arrest of the appellants in connection with FIR No. 0200 registered with Ramtirth Police Station on 11.12.2022 for the offences punishable under Sections 341, 323, 504, 506 r/w Section 34 of the Indian Penal Code and Sections 3 (1) (r) and 3 (1) (s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short "Atrocities Act"). The respondent/informant works as a correspondent for Daily

Sahitya Samrat. The informant who belongs to Scheduled Caste lodged the complaint against the present appellants saying that, there is a work of road going on in his village from 25.11.2022. For the said work Murum is carried by the tractors of Maruti Metkar, Bajirao Metkar and one Arjun Metkar. On the date of incident these appellants stopped the tractors of those persons which were carrying Murum for the road and asked them to show as to from where that Murum was brought and whether they have paid any royalty to the Government. On that, the informant tried to intervene saying that the work of road is in the interest of entire village and not to stop the tractors or to obstruct the work. On that, it is alleged that, these appellants abused the informant in the name of caste. Some other persons also tried to intervene, however, all the appellants thereafter started assaulted the informant and the persons who tried to intervene.

3. The informant went to the police station to lodge an FIR. The police directed him to go to Primary Health Centre. After taking treatment late in the afternoon the information was lodged. The appellants apprehending the arrest approached the learned Special Judge by filing application seeking anticipatory bail. The same came to be rejected and thus, the appellants are before this Court.

4. It is vehemently argued by the learned advocate for the appellants that, the information lodged is false and none of the appellants are working with the Grampanchayat. They are only the persons who are staying in the village. It is further argued that, assuming that incident has taken place, but the complaint is lodged after much delay which shows that it was after thought and only because of the political rivalry between two groups in the village. It is further pointed out that the Tahsildar and the revenue authorities had taken action against other group for excavating Murum illegally. By showing panchnama dated 21.12.2022 he also further invited attention to the notice issued by the Tahsildar and communication issued by the Tahsildar to the Gramsevak in respect of illegal excavation of Murum without paying royalty to the Government. He seriously disputed the bonafides of the informant saying that he is habitual in making such complaints.

5. Learned advocate for respondent No. 3 submitted that looking at the FIR and the contents, it is clear that, there was clear intention on the part of the appellants to abuse, insult and humiliate the informant as he happens to be a person belonging to Scheduled Caste. Twice there is a reference of giving abuses in the name of caste by the appellants. The appellants are not consulted with the Grampanchayat.

They are not holding any post and still they were making enquiry of the tractors. He further submitted that, in the year 2011 one of the appellants that is appellant No. 3 was prosecuted for similar type of offences and thus submits that the appellants do not deserve bail.

6. Learned advocate for respondent No. 3 relies upon the judgment of this Court passed in Criminal Appeal No. 368/2021 dated 30.09.2021 wherein, this Court has observed that when the ingredients of the offences are made out, then there is a bar for invoking provisions of Section 438 of the Code of Criminal Procedure (for short "Cr.PC.") in view of Sections 18 and 18-A of the Atrocities Act.

7. Learned A.P.P. submits that, there is no dispute that incident has taken place in the morning about which the information is lodged. The ingredients are clearly attracted as the incident has taken place in the presence of some people. There is restriction against appellant No. 3. From the police papers it is clearly seen that there are statements of eye witnesses who have witnessed the incident and therefore prays for rejection of appeal.

8. After hearing the parties and after considering the material on record, this Court finds that the ingredients of Sections 3 (1) (s) and 3 (1) (r) so also, ingredients of Section 3 (2) (va) of the Atrocities Act are clearly attracted and in view of bar under Sections 18 and 18-A of the

Atrocities Act the appellants can avail provisions of Section 458 of the Cr.P.C.

9. In view of this, the present appeal deserves to be dismissed and is therefore dismissed.

(KISHORE C. SANT, J.)

PS.B.