

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

902 CRIMINAL APPEAL NO.27 OF 2023

**SUNANDA WD/O. PANDITRAO KACHAVE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.D.M. Shinde, Advocate for the appellants.
Mr.S.R. Yadav-Lonikar, APP for the respondent/State.
Mr.S.A.Wakle, Advocate for respondent No.3.

**CORAM : KISHORE C. SANT, J.
DATED : 01.03.2023**

PC :-

01. Heard learned Advocate for the parties. This is an appeal challenging the order passed by the learned Additional Sessions Judge-3, Hingoli rejecting the application filed by the appellants seeking bail in the event of arrest in connection with Crime No. 355 of 2021 registered with Kalamnuri Police Station, Dist. Hingoli for the offences punishable under sections 323, 427, 447 read with section 34 of the IPC and under section 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

02. The informant-respondent No.3 lodged a report with the police

station in respect of incident dated 29.10.2021. It is alleged that on 29.10.2021 the appellants taken JCB machine at the agricultural land, which is on the side of the land belonging to the informant, separated by a road. It is alleged that with the help of JCB they damaged crop of the informant. When the informant and his wife asked to the appellants about the same, they were abused in the name of the caste. The informant and his wife were even beaten by the appellants. On these allegations FIR came to be registered.

03. The appellants approached the learned Sessions Judge by filing application for bail bearing Cri.Misc. Application (Bail) No.453 of 2022, which came to be rejected. Therefore, the appellants are before this Court.

04. It is vehemently submitted by the learned Advocate for the appellants that the alleged incident is of 29.10.2021 whereas the complaint came to be lodged on 14.12.2021 i.e. after one and half months from the date of incident. No reason is assigned for the delay. He further submits that looking to the contents of the FIR as it is, there is no specific allegation against any of the appellants. He, thus, submits that the learned Sessions Judge has erred in rejecting the application and prays for bail in the event of arrest. The

learned Advocate for the appellants submits that only because appellant No.1 had lodged complaint against the informant, this complaint is lodged. He invited attention of this Court to the application filed by her dated 21.06.2021, wherein she has stated that in the village she resides only with her daughter as her husband is no more. She had also lodged complaint saying that bund of her agricultural land is broken by some persons and they are trying to encroach on her agricultural land, as a counter-blast this the complaint is lodged. She has also produced on record application given by her to the Tahsildar wherein she has specifically made allegation against the informant saying that the informant collects mob and gives abuses to the appellants. The informant also harassed her and her daughter as they are only two staying in the village. It is thus submitted that FIR is lodged only by way of counter-blast.

05. The learned APP has produced papers on record wherein except wife and son of the informant, no one has supported case of the informant. The statement of independent witnesses only shows that some incident took place where there was quarrel between the parties. The statement of the JCB driver is also silent as to abuses in the name of the caste. However, he submits

that by looking at the contents, the offence is made out and prays for rejection of the appeal.

06. The learned Advocate for the respondent/informant vehemently opposed the application. He submits that the allegations are there about abuses in the name of caste. Immediately after the incident on 01.11.2021, the informant did try to lodge the complaint to the police, however, the police did not take the complaint. He was, therefore, required to approach the Court of learned Special Judge by filing Cri. M.A. No.26 of 2021 and it is only after that he could lodge the report and in view of that he withdrew the Cri. Misc. Application. The police initially did not register the offence that itself shows that the appellants are influential persons and prays for rejection of the appeal, in view of bar under section 18 of the Atrocities Act.

07. Considering the submissions, this Court finds that there is no specific allegation in the entire complaint as to which of the appellant abused the informant in the name of caste. It is clear that there is already dispute pending between the parties. There is also delay in lodging the FIR, though it is sought to be explained that on 01.11.2021 the informant had tried to give

information to the police but same was not recorded. This observation also appears in the order passed by the learned Sessions Judge. However, nothing is produced before this Court. It is clear that when the FIR was lodged after one and half months, at least it was expected to assign specific role to the any of the appellants. But still nothing is seen in the FIR. Thus, this Court finds that no case is made out attracting sections under the Atrocities Act and in view of the same this Court is clearly of the opinion that bar under section 18 and 18-A of the Atrocities Act is applicable to the present case. Other offences are bailable. This Court finds that the appeal deserves to be allowed. Hence, the following order is passed :-

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 03.01.2023 is quashed and set aside.
- iii) In the event of arrest of the appellants in connection with Crime No. 355 of 2021 registered with Kalamnuri Police Station, Dist. Hingoli for the offences punishable under sections 323, 427, 447 r/w 34 of the IPC and sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they shall be released on bail on furnishing PR bond of Rs.15000/- (Rupees Fifteen Thousand) with solvent surety in the like amount each.

- iv) The appellants shall not tamper with the prosecution evidence.
- v) The appellants shall not contact the prosecution witnesses.
- vi) The appellants shall attend the concerned police station as and when called by the Investigating Officer.

[KISHORE C. SANT, J.]