

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

903 CRIMINAL APPEAL NO.1009 OF 2022

**SUNIL BABARAO AAMBADWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Mayur Vasant Salunke, Advocate for the appellant
Mr. A. N. Suryawanshi, Advocate for respondent No. 3
Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 14th FEBRUARY, 2023

P. C.

1. Heard learned advocates for the parties.
2. This is an appeal filed by the original accused seeking bail in the event of his arrest in connection with Crime No. 0243 of 2022 registered with Biloli Police Station, Dist. Nanded Dt. 17-12-2022 for the offences punishable under Sections 323, 504, 506 of the Indian Penal Code and Section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
3. The informant-respondent No.3 lodged an FIR stating that he is a Reporter of Punya Nagari and belongs to a scheduled castes. He had published news item about

mismanagement of one Vidya Niketan Hostel run for the students belonging to the backward class in daily news paper namely Dainik Punyanagari. One Babarao, father of the appellant is the President of the said institution which runs the said hostel. The appellant getting annoyed because of the news item, met the informant and threatened on account of publishing news item. The informant thereafter made a complaint to the higher authorities in respect of hostel. Social Welfare Department, therefore, decided to make an inquiry & team of the officers visited the hostel on 16-12-2022 for the inquiry. On getting the information about the visit of team the informant alongwith other Reporters went to the hostel at that time the appellant abused the informant in the name of his caste. He also assaulted the informant in presence of others. His colleague intervened and took him away from the hostel. This incident took place at around 08.00 am on 16-12-2022. The informant thereafter lodged the information at 03.43 pm on 17-12-2022.

4. On coming to know of lodging of FIR the appellant approached the learned Sessions Judge by filing the bail application bearing Criminal Bail Application No. 190/2022. The learned Special Judge (SCST), Biloli rejected the application by order dated 22-12-2022.

5. It is the case of the appellant that no case is made

out attracting the sections of Atrocities Act. The information is lodged out of grudge. No such incident has taken place. The appellant has not done any act with an intention to humiliate or insult the person belonging to the backward class etc. and sought bail in the event of arrest.

6. Learned advocate for the appellant vehemently argued that the incident in question has allegedly taken place in the hostel where the informant himself came uninvited. No intention can be attributed to the appellant to make out the offence under the Atrocities Act. It needs to be specifically shown that the insult is only on the count of informant belonging to the scheduled caste or scheduled tribe. The incident cannot be said to have taken place in the public view as the persons who were present came with the informant and most of them belongs to scheduled caste and scheduled tribe. Therefore, they are interested persons. He relied upon the judgment in the case of *Balu B. Galande Vs State of Maharashtra* reported in 2006 ALL MR (Cri) 3197 wherein this court has held that offence must take place in presence of independent witnesses. It is also held that there needs to be presence of some persons. It is observed that public view needs to be interpreted as in presence of public who are independent, impartial and not interested in the parties. He further relied upon the judgment in the case of *Hitesh Verma Vs State of Uttarakhand* 2020 AIR (SCW) 5584 wherein the Hon'ble Apex court in para 13 has held

that insult and humiliation must be for the reasons that the informant belongs to the scheduled caste or scheduled tribe. There it was a dispute between the parties in respect of the properties and therefore, case was lodged.

7. The judgment in the Criminal Application No. 2151/2019 decided by this court by order dated 01-12-2022. It was a case of quashing. The court by relying upon the case of Hitesh Verma had observed that the dispute was on account of property and in that view of the matter the petition was allowed and the proceeding in the trial court were quashed.

8. The next judgment is in the case of Nandkishor Haribhau Kadam and Others Vs State of Maharashtra and another reported in 2021 DGLS (Bom) 2526 wherein this court had granted bail in the event of arrest by relying upon the judgment in the case of Prathvi Raj Chauhan Vs Union of India and others reported in (2020) 4 SCC 727 by holding that merely calling the person by name of his caste would not constitute an offence under Section 3(1)(r) of the Atrocities Act.

9. Learned APP opposes the appeal. He submits that dispute cannot be said to be out of any other dispute. Persons who were present cannot be said to be interested persons. He submits that bar under Section 18 is clearly attracted in this case. Learned advocate for respondent No.3 also vehemently

opposed the appeal saying that informant is 65 years of age and having respect in the society being a Reporter. He had published news item in respect of hostel run by the father of the appellant. It is for this reason the appellant had grudge against the informant and therefore, he has assaulted the informant while assaulting he has also abused the informant in the name of his caste which clearly shows that the informant was abused and assaulted just with an intention to humiliate the informant in the name of caste. While incident took place there were independent persons also present which clearly shows that ingredients of Atrocities Act are clearly attracted.

10. Coming to the submissions and the judgments relied upon by the learned advocate for the appellant, this court has to test the submissions in view of the judgment cited. In the case of Hitesh Verma (supra) the Hon'ble Apex Court has observed that there was property dispute between the parties and there was no question of humiliation or insult of the informant merely because they happen to be persons belonging to the scheduled castes or scheduled tribe. So far as the case of Balu Galande (supra) is concerned this court has observed that independent person must be present when the incident takes place. In the case in hand it is clearly mentioned that there were other persons present at the time of incident. Merely because some of them happen to be person belonging to the scheduled castes and scheduled tribe will not make them persons interested. As it is

whether the witnesses are interested or independent persons can be decided only during the trial. In the case of criminal Application No. 2151/2019 it was for the purpose of quashing of the complaint and only thing is that was uttered about person as Adiwasí means tribal. Thus, it was held that thus no caste is mentioned and there is no abuse in the name of caste as Adiwasí is general term and no name of any specific caste was mentioned. In the case of Nandkishor this court had held that merely calling a person in the name of caste will not amount to humiliation or insult of a person and in view of facts of the case the court had allowed the prayer for bail in the event of arrest. This court finds that these judgments are not applicable to the present case.

11. The Hon'ble Apex Court in the case of Vilas Pandurang Pawar and another Vs State of maharashtra and Ors reported in (2012) 8 SCC 795 has clearly held that when allegations taken as it is disclose the offence under the Atrocities Act then bar under Section 18 comes in to play and no bail can be granted by restoring the provision of Section 438 of the Cr. P. C. In this case, this court finds that offence is clearly is made out in the complaint. Papers of the investigation show that there are statements recorded of the persons who can be said to be a independent witnesses. There is also a statement under Section 164. This court finds that learned Special Judge has rightly considered the application and rejected the prayer in the

(7)

criapl1009.22

application. No fault can be found with the impugned order.
Hence the following order:-

ORDER

- a] Criminal Appeal stands rejected.

- b] Interim relief granted earlier to continue only for a period of three weeks from the date of receipt of this order.

[KISHORE C. SANT, J.]

VishalK/criapl1009.22