

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

16 CRIMINAL APPEAL NO.1202 OF 2019

**RAJU S/O. POTOJI POTANKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

Mr.S.S. Thombre, Advocate for the appellants.

Mr.PN. Kutti, APP for the respondent/State.

Mr.Akshay S. Jagtap h/f. Mr. A.N. Nagargoje, Advocate for R-2.

**CORAM : KISHORE C. SANT, J.
DATED : 16.01.2023**

PC :-

01. Heard learned Advocate for the appellants. At the outset, learned Advocate for the appellants seeks leave to add prayer clause challenging the order passed by the learned Sessions Judge dated 26.11.2019.

02. Leave granted. The appellants to carry out the amendment within a week's time.

03. The appellants are approaching this Court seeking bail in the event of their arrest in connection with offence registered with Kondalwadi Police Station, Dist. Nanded, bearing Crime No.80 of 2019 for the offences punishable under section 324, 323, 504, 506, 143, 147, 149 of the Indian

Penal Code read with section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

04. On going through the FIR, it is seen that appellant No.1 Raju has abused the informant in the name of caste. Appellant No.2 Bhim has assaulted Narsubai i.e. mother of the informant. The allegations against Sudhakar i.e. appellant No.4 is that he has assaulted sister-in-law of informant, namely, Kavita, who was pregnant at that time, because of that assault she was required to abort. The allegations against appellant No.5-Vijay is that he has assaulted with wooden log to the informant.

05. It is stated that on 03.11.2019 in the Kanduri feast arranged by one of the relatives of informant at Vadetpalli, Dist. Nijamabad, the alleged incident took place wherein appellant No.1 also intervened and started quarreling with the informant. On 04.11.2019 at around 10.00 a.m. appellant No.1 and others again came to the village of the informant, where the alleged incident has taken place.

06. It is submission of the learned Advocate for the appellants that

merely taking name of the caste cannot be said to be causing insult to a person in the name of caste. Secondly, he submits on the strength of the judgment delivered by this Court in **Criminal Application No.802 of 2006 dated 13.04.2006 in the case of Balu B. Galande Vs. State of Maharashtra & Ors.**, that when the incident is not seen by any one, it would not be said to be an incident in public view. He further submits that the allegations are made only because of the previous litigation between the parties. He produced on record judgment passed by this Court in Writ Petition No.12295 of 2018. The petition was filed by one Aruna. Relative of the complainant was elected as President of Kundalwadi. It was challenged by wife of appellant No.2 and there were petitions filed against each other in this Court. Therefore, because of political rivalry between the groups, false complaint is filed. Further, it is submitted that there is no exact evidence to show that Kavita was aborted because of the incident. He, in-fact, submits that there is no document at all to show that she was pregnant when the alleged incident took place.

07. Learned Advocate for the appellants relies upon order passed by this Court in **Criminal Appeal No.1158 of 2019** in the case of **Dattarao s/o. Shivram Bangar & Ors. Vs. The State of Maharashtra & Anr.**, in which this

Court had allowed the appeal observing that the provisions of the Atrocities Act are not attracted. He further relied upon judgment reported in MANU/SC/0843/2020 in the case of Hitesh Verma Vs.The State of Uttarakhand & Ors., wherein the Hon'ble Supreme Court observed in paras 12 and 13 as under :-

“12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as “1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and 2) in any place within public view”.

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.”

08. Heard learned APP for the respondent/State. He produced on record the investigation papers, which reveal that there are statements against Sudhakar, Vijay, Bhim and Raju, which clearly show that there was assault by these persons to the informant and his relatives. Against Raju-Appellant No.1

there are specific allegations that he abused respondent in the name of Caste. Learned APP and learned Advocate for respondent No.2 submit that this is not a case where anticipatory bail should be granted. It is submitted that in view of bar under section 18 and 18-A of the Atrocities Act, this Court need not entertain this appeal.

09. When the offence is, prima facie, made out, it is not open for the Court to entertain the application on merits and bar under section 18 of the Atrocities Act is clearly applicable. The Hon'ble Supreme Court in the case of **Vilas Pandurang Pawar and another Vs. State of Maharashtra and Ors.** reported in **(2012) 8 SCC 795** held that when the allegations are made under the Atrocities Act, bar under Section 18 is clearly attracted and no application for anticipatory bail can be considered. The latest judgment in the case of **Prathvi Raj Chauhan Vs. Union of India and others** reported in **(2020) 4 SCC 727**, wherein it is held that once offence is made out under the Atrocities Act, power under Section 438 of the Code of Criminal Procedure cannot be invoked and no application for anticipatory bail can be considered.

10. In the case of **Dattarao (Supra)**, in the facts of that case, learned

Advocate for the appellants submits that there has to be an intention to insult the informant. It is a trite that a question of intention can be gone into only at the stage of trial. While reading the FIR in this case, it is clear that the incident has taken place twice. The second incident has taken place in the village of the informant. All accused persons went in front of the house of the informant clearly shows that there was some intention in the minds of the accused persons and therefore this judgment is not applicable.

11. Coming to the judgment of Hitesh Verma (Supra), the Hon'ble Apex Court has held that the offence under section 3(1)(r) of the Act, would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a scheduled caste or a scheduled tribe. It is necessary to see prima facie that whether the intention can be made out. As discussed above, when the appellants had themselves went to the house of informant, it clearly shows that there was grudge in their mind because of the incident that took place on the earlier day. This prima facie intention needs to be gathered.

12. Insofar as appellant Nos.3 and 6 are concerned, they are no more now.

13. Since there is material against appellant Nos.1,2,4 and 5, they do not deserve anticipatory bail.

14. Therefore, this Court is inclined to grant bail to appellant Nos.7 to 11, on the following conditions.

(i) In the event of arrest of appellant Nos.7 to 11 in connection with offence registered with Kondalwadi Police Station, Dist. Nanded, bearing Crime No.80 of 2019 for the offences punishable under section 324, 323, 504, 506, 143, 147, 149 of the Indian Penal Code read with section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they shall be released on bail on their furnishing PR bond of Rs.15,000/- (Rupees Fifteen Thousand) each with one solvent surety in the like amount.

(ii) Appellant Nos.7 to 11 shall not contact any of the witnesses and shall not tamper with the evidence.

(iii) Appellant Nos.7 to 11 shall attend the concerned police station as when called by the Investigating Officer.

15. At this stage, learned Advocate for the appellants submits that interim protection is running in favour of the appellants since 2019, same may be continued for a period of four weeks. Learned Advocates for respondents

have heavy objection for the same. Considering that the protection is there since 2019, same is continued for a period of two weeks from today.

16. The Criminal Appeal is accordingly disposed off.

[KISHORE C. SANT, J.]