



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1159 OF 2023

Uttam Changdeo Bhondwe ... Appellant

VERSUS

The State Of Maharashtra
And Another ... Respondents

WITH

CRIMINAL APPEAL NO. 1153 OF 2023

Saida W/o Nabi Pathan ... Appellant

VERSUS

The State Of Maharashtra
And Another ... Respondents

WITH

CRIMINAL APPEAL NO. 1154 OF 2023

Nanasaheb Keshavrao Matsagar ... Appellant

VERSUS

The State Of Maharashtra
And Another Respondents

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Mr. D.R. Kale, Advocate h/f Mr. Kiran P. Rathod, Advocate for
Appellant in CRI.APPEAL/1159/2023

Mr. Shaikh Kayyum Najir, Advocate for Appellant
CRI.APPEAL/1153/2023

Mr. Ravindra V. Gore, Advocate for Appellant in
CRI.APPEAL/1154/2023

Mr. S.V. Hange, APP for Respondent No.1

Mr. Ram S. Shinde, Advocate (appointed) for Respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 22nd FEBRUARY, 2024**ORDER :**

1. By these appeals filed under section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, appellant challenges the impugned order passed by Additional Sessions Judge, Vaijapur in Criminal Application No. 491 of 2023, thereby rejecting the anticipatory bail application filed by appellants.

2. On 02.11.2021 respondent No.2/informant lodged FIR that on 16.11.2021, she applied for *Gharkul* under *Shabri Gharkul Scheme*. She was having acknowledgment of the said application. However, Village Development Officer Nanasaheb Matsagar and Sarpanch Saida Pathan, informed to Block Development Officer and Consolidated Adivasi Scheme Officer and Police Inspector, Waluj, on 07.01.2022, thereby giving false information that informant has not submitted any oral or written application for *Gharkul*. Thereafter, Gramsevak Uttam Bhondve and Sarpanch Saida Pathan passed resolution in Waluj Gram Panchayat in the year 2022 that informant is not ordinary resident of village Waluj and there is no land available to construct *Gharkuls*, and due to mistake, resolution was

passed in her name for *Gharkul*. Therefore, they have supplied false information to public officer as informant belongs to Schedule Tribe with intent to deprive informant from getting the benefit of *Gharkul*. On the basis of this information, FIR at C.R. No.364 of 2023 is registered at Waluj Police Station, Taluka Gangapur, District Aurangabad for offence punishable under section 34 of the Indian Penal Code and under section 3(1)(q) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On registration of crime, appellants approached Sessions Court by filing Criminal Bail Application No.491 of 2023 for anticipatory bail, which is rejected. Hence the present appeals.

3. Heard learned advocate for appellants, learned APP for respondent No.1 – State and learned advocate for respondent No.2. Perused the investigation papers.

4. Section 3 (1)(q) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, reads thus:

"3 (1)(q) - gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe."

5. Perusal of record indicate that name of informant is included in the list of beneficiaries under *Shabri Adivasi Gharkul Yojana*. There is no material on record to indicate that false information in respect of informant was given only because she belongs to Schedule Tribe category.

From the investigation papers, ingredients of section 3(1)(q) are not made out.

6. Appellants have rightly relied on ***Kalpna W/o Mohan Sardar Vs. State of Maharashtra, 2023 DGLS (Bom.) 4137***, wherein learned Single Judge of this Court has held thus:-

"10. It is to be noted that the intention / mens rea of the accused is very vital and important factor. Section 3(1)(q) of the Atrocities Act makes any act of giving false or frivolous information to any public servant with an intention to cause the public servant to use his lawful power to cause injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe. Sub clause (q) has two parts. First part is with regard to the false or frivolous information to a public servant and as per the second part, such information must cause the public servant to use his lawful power to cause injury or annoyance to a member of Scheduled Caste or Scheduled Tribe. The plain reading of this provision would indicate that such an act must be done only with an intention to cause injury or annoyance to a member of Scheduled Caste or Scheduled Tribe. Such an intention must be spelt out from the report."

6. Applying the above observations to the facts of the present case, there is no material on record to show that alleged false information forwarded by appellants has caused the public servant to use his lawful power to cause injuries or annoyance to informant and that appellants committed such act only with an intention to cause injury or annoyance to informant. Therefore, *prima facie*, no offence under section 3(1)(q) is made out in the present case. Hence, bar under section 18 of the Atrocity Act is not attracted.

7. Offence is registered on 02.11.2023 and all the relevant documents are already seized by the Investigating Officer. Appellants in respective appeals are government servants and Sarpanch and their presence can be secured at the time of trial. They are not likely to be abscond. If arrested, appellants i.e. Uttam Changdeo Bhondwe and Nanasaheb Keshvrao Matsagar may lose their job. Considering the stage of investigation, their pre-trial custodial detention is not necessary, in the facts of the present case. Appeals therefore deserve to be allowed. Hence, the following order.

ORDER

(i) Appeals are allowed.

- (ii) Impugned order dated 01.12.2023 passed by learned Additional Sessions Judge, Vaijapur Criminal Bail Application No.491 of 2023, is hereby quashed and set aside.
- (iii) Interim protection granted to appellants by order dated 08.12.2023 is hereby confirmed.
- (iv) Till filing of charge sheet, appellants shall attend the concerned police station as and when called by the Investigation Officer. Appellants shall not tamper prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE