



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 271 OF 2023

APPELLANTS:

1. Vithal Narayan Savkar,
Aged about 50 years,
Occ : Agriculturist.
2. Sahdev Tukaram Ghorade,
Aged about 62 years, Occ : Retired.
3. Hemant Dattatraya Kharode,
Aged about 43 years, Occ : Agriculture.
4. Yogesh Vishwanath Mundokar,
Aged about 40 years, Occ : Agriculturist.
5. Dinesh Ramdas Kheldar,
Aged about 40 years, Occ: Agriculturist.
6. Rahul Ashok Bhuse,
Aged about 23 years, Occ : Agriculturist.
7. Digambar Bhikaji Kheldar,
Aged about 55 years, Occ : Agriculturist
8. Sonu Bhaskar Khandare,
Aged about 35 years, Occ : Agriculturist
9. Shiva Bhaskar Khandare,
Aged about 35 years, Occ : Agriculturist
10. Pawan Wasudev Kawade,
Aged about 20 years, Occ : Agriculturist
11. Shrikrushna Vasanta Bochare,
Aged about 28 years, Occ : Agriculturist
12. Gajanan Vilas Kawade,
Aged about 27 years, Occ : Agriculturist
13. Sahdev Digambar Akhare,
Aged about 40 years, Occ : Agriculturist

14. Shubham Balu Shingote,
Aged about 25 years, Occ : Agriculturist
15. Pawan Dayaram Kawatkar,
Aged about 24 years, Occ : Agriculturist
16. Ganesh Ramesh Talle,
Aged about 30 years, Occ : Agriculturist
17. Umesh Rajaram Akhare,
Aged about 27 years, Occ : Agriculturist
18. Gaurav Santosh Ghorade,
Aged about 21 years, Occ : Agriculturist
19. Sopan Sadashiv Kawale,
Aged about 25 years, Occ : Agriculturist
20. Santosh Tukaram Ghorade,
Aged about 50 years, Occ : Agriculturist
21. Vitthal Shrikrushna Ghorade,
Aged about 25 years, Occ : Agriculturist
22. Sagar Pramod Rahane,
Aged about 23 years, Occ : Agriculturist

All R/o Hiwara Bk. Tq. Khamgaon,
District : Buldhana.

VERSUS

RESPONDENTS :

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Pimpalgaon Raja,
Tah. Khamgaon, District Buldhana.
2. Nimbaji Shalikram Wakode,
Aged about 54 years,
Occ : Agriculturist,
R/o. Hiwara Bk., Tq. Khamgaon,
District Buldhana.

Shri A. S. Mardikar, Senior Advocate with Shri Saumitra Kanitkar,
Advocate for appellants.
Ms. H. S. Dhande, Additional Public Prosecutor for respondent No.1.
Shri M. N. Ali, Advocate for respondent No.2.

CORAM: URMILA JOSHI-PHALKE, J.
DATED : 08/03/2024.

ORAL JUDGMENT :

1. **Admit.** Heard finally with the consent of learned counsel appearing for the parties.

2. By preferring this appeal, the appellants have challenged the order passed by the Special Court and Additional Sessions Judge, Khamgaon dated 31/03/2023 by which the application for anticipatory bail filed by the present appellants is rejected.

3. The appellants apprehending the arrest at the hands of police, the crime is registered against them. On the basis of report lodged by the informant on an allegation that on 26/02/2023, the marriage procession was proceeding behind Hanuman Temple. At that time, he restrained the said procession and asked whether they have obtained permission. At that time, the present appellants abused him by saying "Boudha" and thereafter, assaulted him. On the basis of said report, police have registered the crime against the present appellants.

4. After registration of the crime, the appellants approached to the Special Court for grant of anticipatory bail, which was rejected.

5. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellants.

6. It is submitted by the learned counsel for the appellants that as far as the allegations are concerned, it is only to the extent that the present appellants have called the informant by saying "Boudha". Mere mention of the caste or the religion is not sufficient to attract the provisions of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989 (For short, "Atrocities Act"). He submitted that while releasing the appellants on ad-interim anticipatory bail, this Court has already observed that the accusation against the present appellants requires to be considered in the backdrop of the observation of the Hon'ble Apex Court in the case of **Satender Kumar Antil Vrs. Central Bureau of Investigation**, reported in **(2022) 10 SCC 51** as well as this Court observed that the accusation against the present appellants is that they have abused the informant by calling him as "Boudha". "Boudha" is not a caste, but it is a religion, as it is mentioned that the caste is abused is not on the count that the informant and his

family members are belonging to Scheduled Caste, but on account of dispute arising out of marriage procession initiated by them with Disc Jockey i.e. DJ without permission of the police authority. The custodial interrogation is not required and the appellants protected by granting interim protection. He submitted that now, the investigation is completed as far as custodial interrogation is concerned, it is not required and therefore, ad-interim protection granted to them deserves to be confirmed.

7. Learned APP for the State and learned counsel for the respondent No.2 strongly opposed the application on the ground that with intent to humiliate and insult the informant, the present appellants have referred by his religion and therefore, bar under Section 18-A is attracted and the application deserves to be rejected.

8. Having heard learned counsel for the appellants, learned APP for the State and learned counsel for respondent No.2, perused the recitals of the FIR and the investigation papers. There is no dispute as to the fact that the quarrel took place between the informant and the present appellants when the marriage procession was proceeding. The Only allegation against the present appellants is that they have referred the informant by saying "Boudha". It is now well settled that mere reference of the

caste or reference of the religion is not sufficient to attract the provisions of the Atrocities Act. The abuses or reference of the caste shall be along with the intention to humiliate the member of Scheduled Caste or Scheduled Tribe in any place within public view. The basic ingredient of Section 3(1)(r)(s) of the Atrocities Act is that there must be intentional insult with intent to humiliate the member of the Scheduled Caste or Scheduled Tribe in any place within public view. Mere reference of the caste is not sufficient to attract the provision. The reference of the caste though amount to insult or abuse him, it cannot be said that there is intention to humiliate such person. Considering the allegations made in the FIR, prima facie case is not made out. Firstly, grant of anticipatory bail under Section 438 of Code of Criminal Procedure is barred in respect of offences under the Atrocities Act, however, where prima facie case is not made out, anticipatory bail can be granted in appropriate circumstances. The Hon'ble Apex Court also in the case of **Prathvi Raj Chauhan Vrs. Union of India and others**, reported in **(2020) 4 SCC 727**, wherein it is held that where the prima facie case is not made out, anticipatory bail can be granted in appropriate circumstances with cautious exercise of power. The learned Trial Court has not considered this aspect and rejected the application which requires to be quashed and set aside. In view of

that, appeal deserves to be allowed. Accordingly, I proceed to pass following order :-

ORDER

- i] The appeal is allowed.
- ii] The order dated 31/03/2023 passed by the Additional Sessions Judge, Khamgaon, Dist. Buldhana in Anticipatory Bail Application (ABA) No.63/2023 is quashed and set aside.
- iii] **Appellants Nos.1] Vithal Narayan Savkar, 2] Sahdev Tukaram Ghorade, 3] Hemant Dattatraya Kharode, 4] Yogesh Vishwanath Mundokar, 5] Dinesh Ramdas Kheldar, 6] Rahul Ashok Bhuse, 7] Digambar Bhikaji Kheldar, 8] Sonu Bhaskar Khandare, 9] Shiva Bhaskar Khandare, 10] Pawan Wasudev Kawade, 11] Shrikrushna Vasanta Bochara, 12] Gajanan Vilas Kawade, 13] Sahdev Digambar Akhare, 14] Shubham Balu Shingote, 15] Pawan Dayaram Kawatkar, 16] Ganesh Ramesh Talle, 17] Umesh Rajaram Akhare, 18] Gaurav Santosh Ghorade, 19] Sopan Sadashiv Kawale, 20] Santosh Tukaram Ghorade, 21] Vitthal Shrikrushna Ghorade and 22] Sagar Pramod Rahane,** be released on anticipatory bail in the event of their arrest in connection with Crime No.58/2023 registered under Sections 341 and 143 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond of Rs.25,000/- each with one solvent surety in the like amount.

iv] The appellants shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the present case.

9. The appeal is disposed of.

[URMILA JOSHI-PHALKE, J.]