



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

CRIMINAL APPEAL NO.92 OF 2025

Ajiz s/o Khudbuddin Sayyad
Ag-51 yrs. Occ-Hotel Business,
R/o Sakur, Tal-Sangamner,
Dist-Ahilyanagar.

...Appellant

Versus

1. The State of Maharashtra
2. Adinath Tukaram More,
Age -24, Occu-Labour,
R/o. Ambhore, Tal-Sangamner
Dist. Ahmednagar.

...Respondents

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Mr. Pathan Yunus Basheer, Advocate for Appellant.
Mr. S. M. Ganachari, APP for Respondents/State.
Ms.Ashwini Lomte, Advocate for Respondent No.2(appointed).

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CORAM : SHAILESH P. BRAHME, J.

DATE : 22ND APRIL, 2025

P.C.:

1. This appeal is directed against order of rejection of pre-arrest bail in furtherance of offence bearing Crime No.0017/2025 registered with Ghargaon Police Station, Dist. Ahilyanagar for the offences punishable under Sections 118(1), 115(2), 352, 351 (2), 321 (3), 3(5) of the Bhartiya Nyay Sanhita, 2023 and under Sections 3(1)(r), 3(1)(s), 324(4) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Appellant is the proprietor of a hotel by named Aasraa Khanawal

which is at Sakur Bus Stand, Taluka Sangamner, District Ahilyanagar. On 13.01.2025 informant and his friend had been to hotel for having food. The non-vegetarian food served to them was doubted and on that count a ruckus took place between the informant and his companion on one hand and the appellant and the co-accused on the other hand. There was hot exchange of words, scuffle which gave rise to distinct First Informant Report.

3. At the instance of the appellant offence Crime No.16 of 2025 is registered at 3.13 a.m. on 14.01.2025 against 15 persons who damaged the hotel and vandalized it. Interestingly, informant and his friend were not identified to be the accused responsible for the overt act amongst others. They were referred in the body of complaint who had placed the order and were dissatisfied with the bill of Rs.350/-. At their instance other accused persons were summoned and the further offence took place.

4. It is alleged by the informant in offence bearing C.R.No.17 of 2025 registered on 14.01.2025 at 18.23 p.m. that appellant and his son abused them on caste, threatened them and assaulted them. Appellant is alleged to have become furious when he was asked about the genuineness of the non-vegetarian meal. It is further alleged that his son assaulted them with iron rod.

5. Learned counsel for the appellant submits that appellant is falsely implicated in the offence to give counter blast to offence C. R. No.16 of 2025. He would submit that there was no reason for insulting the informant on caste and his caste was not known to the appellant. It is submitted that in fact great damage was done to the appellant's property by the informant and other 15 persons.

6. Learned APP tenders on record relevant papers of investigation. He would submit that there are eye witnesses, namely Bhimraj, Sandeep, Deepak and Aniket who are independent and giving true account. It is submitted that specific role has been attributed to the appellant and the incident took place within public view. My attention is also drawn to the Injury Certificate.

7. Learned counsel Ms. Lomte appearing for respondent no.2 adopts the submission of learned APP. She would additionally submit that delay has been explained in First Information Report by the informant. She would further submit that no injury was caused to the appellant or his son for the alleged act stated in offence bearing C.R. No.16 of 2025. The said offence is false.

8. I have gone through contents of C.R. No.16/2025 as well as 17/2025. The report at the instance of appellant is lodged prior in time.

Incident of both the report is common. It occurred at hotel of the appellant. Report lodged by the appellant refers to the instance of placing order and after delivering the meals charging it for Rs.350/-, albeit, names of the informant and his companion have not been mentioned. It reveals that appellant was not knowing informant much less his caste. The appellant is from Sakur whereas informant is from Ambhore Taluka Sangamner, District Ahmednagar. First Information Report of the respondent/informant is silent regarding knowledge of the appellant regarding his caste. If this is the situation then although alleged offence took place within public view, it was lacking the intention to cause insult on caste. Principle laid down by Supreme Court in the matter of *Hitesh Varma Vs. State of Uttarakhand & Anr.* can be made applicable. Learned counsel for the appellant is justified in contending that offence under Atrocities Act cannot be attracted.

9. I have gone through the statements of the witnesses referred by learned APP. These witness cannot be termed to be eye witnesses because although they are the shop keepers of the vicinity or by-passers, they did not depose that they actually witnessed the incident. On the contrary all of them say that they learnt about the instant. The injury certificate does not disclose serious or grievous injuries.

10. Considering over all circumstances, I find that learned judge committed error of jurisdiction in rejecting of pre-arrest bail. I therefore pass the following order:-

O R D E R

A. The criminal appeal is allowed.

B. Appellant - Ajiz s/o. Khudbuddin Sayyad shall be released on bail in furtherance of offence bearing Crime No.0017/2025 registered with at Ghargaon Police Station, Dist. Ahilyanagar (Ahmednagar) for the offence punishable U/Sec. 118(1), 115(2), 352, 351 (2), 351(3), 3(5), 324 (4) of the Bhartiya Nyaya Sanhita, 2023 and under Section 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 on furnishing personal bond of Rs.20,000/- (Twenty thousands only) with one solvent surety of like amount on following conditions :

(i) The appellant shall co-operate with the investigating officer and shall make himself available as and when called upon by Investigating Officer.

(ii) Appellant shall not contact or tamper with the prosecution witness.

C. For the assistance rendered by Ms.Ashwini Lomte, learned counsel fees of Rs.5,000/- (Rs. Five thousands only) is quantified.

[SHAILESH P. BRAHME, J.]