



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

CRIMINAL APPEAL NO. 172 OF 2025

BANTY ALIAS NITIN SHAHAJI RATHOD

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Revan P. Bhumkar

APP for Respondent No.1 /State : Mrs. Ashlesha S. Deshmukh

Advocate for Respondent No.2 : Mr. Rahul M. Gaikwad (Appointed)

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CORAM : SHAILESH P. BRAHME, J.

DATE : 9th APRIL 2025

PER COURT :

. Heard both the sides.

2. This appeal is directed against rejection of anticipatory bail in furtherance of Crime No.36/2025 registered with Dharashiv Rural Police Station, District Dharashiv for the offence punishable under Sections 118(1), 115(2), 3(5), 351(2), 351(3), 352 of Bhartiya Nyaya Sanhita, 2023 and under Sections 3(1)(r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. Respondent No.2 lodged report on 03.02.2025 alleging that she and her son Govind were abused and assaulted by the Appellant and co-accused Anil. Appellant is alleged to have assaulted Govind by iron rod on his head. He is also alleged to have hurled casteist abuses to the Appellant.

4. Learned Counsel for the Appellant submits that co-accused Anil is also released on bail. The investigation is over and the injury on the victim Govind is simple in nature as he was immediately discharged from the hospital. It is submitted that the parties are resident of the same place and because of this previous quarrel, he is implicated in the offence. It is submitted that the allegations are not serious in nature.

5. Learned APP repels the submission. She tenders on record affidavit-in-reply that there are eye-witnesses and one of them is independent one. The statements are consistent and it is evident that incident occurred within public view and the Appellant inflicted blow by iron rod on vital part of the victim. It is further submitted that the Appellant has antecedents and he is not entitled to any protection. It is further submitted that weapon used in the offence is yet to be recovered. The Appellant is absconding and his custodial interrogation is required.

6. Learned Counsel for Respondent No.2 supports the submission of learned APP. Additionally he would submit that specific role has been attributed to the Appellant. Considering gravity of the assault, the Appellant is not entitled to any protection.

7. I have considered rival submissions of the parties. The presence of the Appellant at the relevant time cannot be disputed. The Appellant has caused assault by iron rod on the head of Govind,

son of the Informant. The injury certificate shows that there are three injuries which are simple in nature caused by hard and blunt object that is iron and steel rod. The incident occurred within public view.

8. I have gone through the statements of witnesses – Moharbai, Nitin and Balaji. The statement of Moharbai shows that as if she was accompanying Informant since beginning and she witnessed everything right from 07:45 pm. on 03.02.2025 when Govind had been to Informant making grievance about the overtact of the Appellant. First Information Report does not disclose her presence. The statement of Nitin shows that two instances occurred on the relevant date and time. One is that Govind was slapped by Nitin Shahaji Rathod and another is abuses and assaulted by iron rod on the Informant. First instance quoted by Nitin is inconsistent with the F.I.R. I have also gone through the statement of Balaji. His statement is also improvisation, exaggeration and inconsistent with F.I.R.

9. In view of the apparent inconsistency revealed from the statements recorded by the Police, a doubt is created regarding occurrence of incident in question. Three witnesses are giving inconsistent account for the incident in question. Therefore although alleged incident occurred within public view, the occurrence is doubtful and possibility of false implication cannot be ruled out. Hence I am inclined to allow the appeal. The impugned order is unsustainable. I, therefore, pass following order :

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The impugned judgment and order is quashed and set aside.
- (iii) In the event of arrest, Appellant – Banty @ Nitin s/o Shahaji Rathod shall be released on bail in furtherance of Crime No.36/2025 with Dharashiv Rural Police Station, District Dharashiv, on furnishing P.R. Bond of Rs.30,000/- (Rupees Thirty Thousand) with one solvent surety on following conditions :
 - (a) Appellant shall cooperate with Investigating Officer and shall remain present with the concerned Police Station on every Monday between 10:00 am. to 05:00 pm.
 - (b) Appellant shall not enter Village-Ghatangri Taluka and District Dharashiv till filing of the charge-sheet, save and accept reporting the police station.
 - (c) Appellant shall furnish his place of resident and mobile number.
 - (d) Appellant shall not tamper the prosecution witnesses.
 - (e) Learned Counsel for Respondent No.2 is quantified Rs.4000/- for the assistance given to this Court.

**SHAILESH P BRAHME
JUDGE**