



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

CRIMINAL APPEAL NO. 582 OF 2024

Balasaheb s/o Baban Balode
Age 44 years, Occu: Business
R/o Khandgaon, Sangamner
Tq. Sangamner, Dist. Ahmednagar

... **Appellant**

VERSUS

1. The State of Maharashtra
Through the Police Inspector
City Police Station, Sangamner
District Ahmednagar

2. Gorakh s/o Khandu Rupwate,
Age 39 years, Occu: Private Job
R/o Khandgaon, Sangamner
Tq. Sangamner, Dist. Ahmednagar

... **Respondents**

**WITH
CRIMINAL APPEAL NO. 583 OF 2024**

1. Ashok s/o Swargya Shinde
Age 35 years, Occu: Service
R/o Khandgaon, Sangamner
Tq. Sangamner, Dist. Ahmednagar

2. Saya @ Sainath Ajimalang Shinde
Age 27 years, Occu: Agril.
R/o Khandgaon, Sangamner
Tq. Sangamner, Dist. Ahmednagar

... **Appellants**

VERSUS

1. The State of Maharashtra
Through the Police Inspector
City Police Station, Sangamner
District Ahmednagar

2. Gorakh s/o Khandu Rupwate, ... **Respondents**
Age 39 years, Occu: Private Job, R/o
Khandgaon, Sangamner, Dist. Ahmednagar

Mr. K. N. Shermale, Advocate for the Appellants
Mrs. Chaitali Chaudhari-Kutti, APP for Respondent No.1 State
Mr. V. Y. Bhide, Advocate for Respondent No.2

CORAM : Y. G. KHOBRADE, J.

RESERVED ON : 03.03.2025

PRONOUNCED ON : 27.03.2025

JUDGMENT:-

1. Heard.
2. Admit and it is heard finally.
3. By these Appeals, the appellants have challenged the order dated 26.06.2024 passed by the learned Additional Sessions Judge, Sangamner Dist. Ahmednagar, in Criminal Bail Application No. 202 of 2024, by which the application of the appellants for grant of anticipatory bail was rejected.
4. The accusations against the present appellants are on the basis of report lodged by the informant/Gorakh Khandu Rupwate alleging that, on 02.06.2024 at 10.30 am, when he was at Hivargaon village for his personal work, he had received phone call from his son Vansh, who informed him that, his son Vansh, his cousins Anil Rupavate and Sunil Rupavate had gone to their field, at that time, accused Ashok Shinde with other 5 to 6 persons came there and asked them as to why they ploughing

the field as they are owner of said filed and abused them in filthy language as well as on caste. Therefore, his son informed him to come immediately. Therefore, the informant returned from said village and was reached near Dairy of village Khandgaon, where his son and nephews visited him and informed about the incident. At that time, his wife Shital also visited there. After discussion about the incident when they were proceeding to lodge the report with the Police Station, at that time, the accused Ashok, Shinde, Balasaheb Baban Balode and other 4/5 persons alighted from four wheeler and took out iron rod and assaulted and threatened them. At that time, accused Balasaheb Baban Balode asked them to give land and abused them by saying that the fact of giving land not coming in their mind as they belong to Scheduled Caste. At that time, the accused Ashok Shinde and his associates assaulted them with iron rod and ran away. Thereafter when all of them proceeded towards Police Station, the accused Ashok Shinde, Saya @ Sainath Ajimalang Shinde, Balasaheb Baban Balode and their associates came on Highway near Akola Naka and assaulted them with iron road, fist and kick blows. When informant's wife Shital informant's wife intervened, the accused caught her hair and tried to pull her clothes. It is further alleged that accused Balasheb Balode abused them by saying that they belong to Scheduled Caste lower category. On the basis of said FIR, Crime No. 0479/2024 registered with Sangamner City Police Station, District Ahmednagar for

the offences punishable under sections 143, 147, 148, 149, 324, 354, 504, 506, 341 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)Act, 1989.

5. After registration of Crime, the appellants/accused Ashok Shinde and Saya @ Sainath Shinde and Balasheb Balode approached Special Court/Sessions Judge, Sangamner by filing Criminal Bail Application No. 202 of 2024 and prayed for anticipatory bail. On 26.06.2024, the learned Special Court rejected said bail application.

6. Being aggrieved by order of rejection of bail, the accused Balasaheb Ajimalang Balode filed Criminal Appeal No.582 of 2024. The accused Ashok Swargya Shinde and Saya @ Sainath Ajimalang Shinde filed Criminal Appeal No. 583 of 2024 before this Court under section 14(A) of the SC & ST (Prevention of Atrocities)Act and prayed for anticipatory bail.

7. The learned counsel appearing for the appellants in both the appeals canvassed that, as per recital of report, incident took place on 02.06.2024 at about 10.30 hours, however, the informant lodged the report at about 20.11 hours, therefore, there is delay while lodging the report. As per contents of report, first incident of abusement on caste and

assault by the accused occurred in the agricultural field of the informant. The second incident of assault and abuse on caste occurred near Dairy of village Khandgaon and third incident occurred near Akole Naka on Highway. However, the allegations made in the report is not sufficient to constitute the offence under Sections 3(1)(w)(i), 3(1)(W)(ii), 3(1)(r), 3(1)(s) and 3(2)(va) of the SC & ST (Prevention of Atrocities)Act because the informant has not stated that, the incident of abuse on caste was occurred within public view and said incident was viewed by public. The allegation made in the complaint about abuse on caste and merely reference of caste is alleged it is not sufficient to attract provisions of the SC & ST (Prevention of Atrocities)Act, hence, bar under section 18A of the Act is not created.

8. Per contra, the learned APP and the learned counsel appearing for respondent No.2 informant strongly opposed the appeal. It is canvassed that the incident is occurred at the public place i.e. first time in the field of informant, second near Dairy of village Khandgaon and third near Akole Naka on Highway. Therefore Section 18-A of the SC & ST (Prevention of Atrocities)Act creates bar. It is further canvassed that, the accused are from upper caste and they are of criminal nature. Therefore, if the accused are enlarged on anticipatory bail, in that event, there is every possibility of tampering prosecution evidence and possibility of issuance of threat to the

informant and other witnesses can not be ruled out, hence, prayed for dismissal of both appeals.

9. The learned APP further canvassed that the incident of abusement in caste witnessed by Smt. Parvatibai Sadashiv Kharat, who has stated in her statement that, on 02.06.2024, at about 10.30 a.m. when she visited the field of informant after hearing noise of quarrel, at that time, the accused Ashok Shinde and his associates were abusing the informant's son and his nephews on caste. So also, the material available on record shows that the accused persons abused the informant's son and his nephew on their caste. The accused Ashok Shinde pulled hairs of the informant's wife and abused her in filthy language and outraged her modesty. Therefore, the applicants have not set out substantial ground to enlarge them on bail. Therefore, prayed for dismissal of both appeals.

10. No doubt, Section 18 and 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, creates a bar for grant of anticipatory bail in respect of crime registered under the Atrocities Act, if such incident is occurred in the public view. However, where prima facie case is made out, in that event, anticipatory bail can be granted in appropriate circumstances with a cautious exercise of power. In case of ***Virendra Singh Vs. State of Rajasthan, 2000 Cri. L.J. 2899***, it is held that, if a person is even alleged of accusation of committing an offence under

the SC & ST (Prevention of Atrocities)Act, the intention of Section 18 is clearly to debar him from seeking the remedy of anticipatory bail and it is only in the circumstances where there is absolutely no material to infer as to why section 3 has been applied to implicate a person for an offence under the SC & ST (Prevention of Atrocities)Act, the Courts would be justified in a very limited sphere to examine whether the application can be rejected on the ground of its maintainability.

11. In the case of ***Hitesh Verma Vs. State of Uttarakhand and another Vs. State of Uttarakhand***, the Hon'ble Supreme Court held that, insult or intimidation to a person will not be an offence under the 1989 Act, unless such insult or intimidation is only on account of victim belonging to SC/ST. Therefore, it is necessary to make out the case that when member of vulnerable section of the society is subjected to indignities, humiliations and harassment, because of belonging to that vulnerable section of society and such abuse should be in public view and observed in paragraph 15, as under:-

“15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the

four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.”

12. In the Judgment delivered on 27.07.2022 in case of **Sk. Akbar Sk. Bismillah Vs. State of Maharashtra** Criminal Application (APL) No.953 of 2019 at Nagpur Bench of this Court held that, it require to make out the case for threat and intimidation in conjunction with reference to the caste or community in the public view.

13. In recent judgment delivered on 31.01.2025 by the Hon'ble Supreme Court in **Special Leave Petition (Criminal) No. 8778-8779 of 2024, Karuppudayar Vs. the State Ref. By the Deputy Superintendent of Police, Lalgudi Trichy & ors**, the Hon'ble Supreme Court considered the case of **Swaran Singh and others Vs. State, through Standing Counsel and another, (2008) 8 SCC 435** and case of **Hitesh Verma Vs. State of Uttarakhand and another, (2020) 10 SCC 710** and held that, 'within public view', the place should be open where the members of the public can witness or hear the utterance made by the accused to the victim. If the alleged offence takes place within the four corners of the wall where members of the public are not present, then it cannot be said that it has taken place at a place within public view.

14. In case in hand, it appears that, the respondent No.2/informant lodged the FIR and alleged that, on 02.06.2024, at about 10.30 a.m. incident of abusement on caste and assault firstly occurred in agricultural field of the informant. The second incident of assault and abusement on caste allegedly occurred near a Dairy of Village Khandgaon and third incident of assault and abusement on caste occurred near Akole Naka on Highway. However, the FIR does not disclose that, the incident of abusement on caste to the informant's son and his nephews occurred in public view or incident of utterance in caste was viewed by the public.

15. No doubt the places of occurrence of incident of assault and abusement on caste allegedly occurred near Dairy of village Khandgaon and on Highway near Akole Naka, however, the FIR does not disclose about watching of said incident by the public or such incident occurred within public view. Therefore, considering the law laid down in the cited case laws, I am on view that, Sections 18 and 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act does not create bar to enlarge the appellants on anticipatory bail by invoking powers under section 439 of the Criminal Procedure Code.

16. On perusal of the case diary it appears that, during the course of investigation, the Investigating officer has seized two iron rods, handle of baseball like aluminum rod from area surrounding village Khandgaon and

collected CCTV footage. Therefore, there is nothing remain to be seized and it is not necessary to interrogate the appellants/accused.

17. In view of the above discussion, both the appeals are deserve to be allowed and to enlarge the appellants/accused to release on anticipatory bail. Therefore, the impugned order dated 26.06.2024 passed by the learned Additional Sessions Judge, Sangamner Dist. Beed in Criminal Bail Application No. 202 of 2024 needs to be quashed and set aside.

18. On 3rd July, 2024, this Court (Coram: Shivkumar Dige, J.) passed an order in Criminal Appeal Nos. 582 of 2024 and 583 of 2024 and enlarged the present appellants/accused on interim anticipatory bail in Crime No.479 of 2024 registered with Sangamner City Police Station District Ahmednagar. Therefore, said order needs to be extended till conclusion of the trial. Hence, I proceed to pass the following order:

ORDER

- (i) Criminal Appeal Nos. 582 of 2024 and 583 of 2024 are allowed.
- (ii) The impugned order dated 26.06.2024 passed by the learned Additional Sessions Judge, Sangamner Dist. Ahmednagar in

Criminal Bail Application No. 202 of 2024 is hereby quashed and set aside.

- (iii) The interim anticipatory bail granted by this Court on 3rd July, 2024 shall continue till conclusion of the trial in Crime No.479 of 2024 registered on 02.06.2024 with Sangamner City Police Station, District Ahmednagar.

(Y. G. KHOBRAGADE, J.)

JPChavan