



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

CRIMINAL APPEAL NO. 500 OF 2025

1. Nitin s/o Baliram Gatkal
 2. Baliram s/o Nivrutti Gatkal
 3. Vishal s/o Ghansham Duche
-APPELLANTS

VERSUS

1. The State of Maharashtra,
Through its Investigation Officer,
Ambi Police Station, Tq. Bhoom,
Dist. Osmanabad (Dharashiv)
 2. The Superintendent of Police,
Osmanabad (Dharashiv)
 3. X.Y.Z.
-RESPONDENTS

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Shri N. B. Narwade, Advocate for the Appellants
Shri Sunil B. Jadhav, APP for Respondent Nos.1 and 2/ State.
Shri P. V. Tapse Patil, Advocate for Respondent No.3

**WITH
CRIMINAL APPEAL NO. 513 OF 2025**

- Dinesh s/o Vaijinath Bahirmal
-APPELLANT

VERSUS

1. The State of Maharashtra,
Through its Investigation Officer,
Ambi Police Station, Tq. Bhoom,
Dist. Osmanabad (Dharashiv)
 2. The Superintendent of Police,
Osmanabad (Dharashiv)
 3. X.Y.Z.
-RESPONDENTS

...

Shri S. A. Nagarsoge, Advocate for the Appellant
Shri Sunil B. Jadhav, APP for Respondent Nos.1 and 2/ State.
Shri P. V. Tapse Patil, Advocate for Respondent No.3

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 15th September, 2025

P. C. :-

1. By Criminal Appeal No.500/2025, the appellants are praying for quashing and setting aside the order dated 02/07/2025, passed by the learned Additional Sessions Judge, Bhoom, Dist. Dharashiv, in Criminal Bail Application No.95/2025 whereby, the said application preferred by the appellants for grant of anticipatory bail was rejected.

2. By Criminal Appeal No.513/2025, the appellant is praying for quashing and setting aside the order dated 01/07/2025, passed by the learned Additional Sessions Judge, Bhoom, Dist. Dharashiv, in Criminal Bail Application No.93/2025 whereby, the said application preferred by the appellant for grant of anticipatory bail was rejected.

3. The aforesaid anticipatory bail applications were preferred in Crime bearing FIR No.0059/2025 registered on 13/06/2025 with Ambi Police Station, Tq. Bhoom, District Dharashiv for the offences punishable under Sections 64(1), 74, 333, 115(2), 352, 351(2), 351(3), 3(5) of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(2)(va), 3(1)(r), 3(1)(s), 3(1)(w) and

3(1)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Atrocities Act'). The FIR came to be lodged at the behest of respondent No.3/ informant in these appeals, namely, Kamal Tukaram Gaikwad.

4. Through these appeals, the appellants are also praying for grant of anticipatory bail in the aforesaid crime.

5. The aforesaid Crime No.0059/2025 is registered on the basis of the report lodged by respondent No.3/ informant stating therein that she is resident of village Ambi, Taluka Bhoom, District Dharashiv. As per her report, on 11/06/2025 at about 9:00 p.m. when she was asleep, at about 2:30 a.m. on 12/06/2025, somebody knocked the door of her house. Therefore, she woke up and after awaking, she opened the door and saw that the accused persons/appellants in front of her house. The accused persons alleged to have forcefully entered in her house and misbehaved with her. It is alleged that even though they were knowing that she belongs to scheduled caste, still they have abused her in filthy language by referring to her caste. They alleged to have insisted her to give undertaking on bond paper for transferring her land and house in their name. They also alleged to have pushed her down and assaulted her. In the

said attack, they alleged to have outraged her modesty. There are also serious allegations of inserting chilly powder in her private parts by them. They also alleged to have threatened for murdering her if she did not execute the bond in their favour for transferring her land in their name. It is further alleged that after the accused left, she went to police station, from where she were referred to the Government Medical Hospital. After having treatment, she approached the Police Station, Ambi and lodged report. On the basis of said report, the crime was registered for the offence punishable under Sections 64(1), 74, 333, 115(2), 352, 351(2), 351(3), 3(5) of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(2)(va), 3(1)(r), 3(1)(s), 3(1)(w) and 3(1)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. Heard learned Advocate Mr Narwade for the appellants in Criminal Appeal No.500/2025 and learned Advocate Mr Nagarsoge for the appellant in Criminal Appeal No.513/2025, learned APP Mr Sunil Jadhav appearing for respondent Nos.1 and 2/State in both the appeals and learned Advocate Mr Tapse Patil for respondent No.3 in both the appeals.

7. According to the learned Advocates for the appellants in both the appeals, the appellants are falsely

implicated by the informant/respondent No.3. There is long standing civil dispute between the informant and the appellants and the informant is in the habit of filing false complaints against the villagers. The villagers had made written application to the Sub Divisional Police Officer, Bhoom in the year 2018, stating therein that the informant is in the habit of implicating the various villagers in false complaints. Therefore, learned Advocates for the appellants state that the appellants in both the appeals have not committed any offence of assaulting or abusing the informant with intention to outrage her modesty. According to the appellants, they were not present on the spot. Though they are residing in the same village, their houses are located around 3 to 4 kms away from the spot. So far as accused No.3/Vishal Duche is concerned, he is residing 40 to 50 kms away from the spot and at the time of incident, he was at Jamkhed. Accused No.2/Baliram Gatkhal is 71 years old and suffering from medical ailments. The informant has specifically levelled allegations against them with an ulterior motive in order to grab suit property, of which mutation entry was effected in favour of appellants. The FIR lodged by the informant is with ulterior motive with intention to implicate the appellants which can be seen from the fact that the appellant/Dinesh Vaijinath Bahirmal in Criminal Appeal No.513/2025, who was not present at the spot

at the time of alleged incident. The CCTV footages of the particular time disclose the said fact about his presence somewhere else and therefore, the charge-sheet is not filed against him by the Police. This shows that respondent No.3/informant is deliberately making false allegations against the appellants in order to implicate them in a serious crime. According to learned Advocates for the appellants, the complainant is habitual of filing false complaints and on number of occasions, she had tried to harass the different persons. Learned Advocates for the appellants in both the appeals invited my attention to the complaints made by the various villager on 25/04/2018 against the informant and there was a complaint of blackmailing or implicating them in false cases. They have stated various incidents and the victims of such complaints to whom the informant had made accused of committing crimes. Those crimes have been later on turned down to be false implications. Due to such behaviour of the informant, the villagers seems to have approached the police authorities for initiating action against the informant. According to them, Regular Civil Suit No.228/2025 which reveals that the informant is GPA holder and wanted to obtain declaration that Gut No.87/G situated at village Ambi, Tq. Bhoom belongs to her. Since the said suit property has been purchased by accused No.3/appellant

No.3/ Vishal Duche in Criminal Appeal No.500/2025, she has lodged the false and concocted FIR. According to the learned Advocates for the appellants, there is no *prima facie* offence made out under the provisions of the Atrocities Act against the present appellants. They submitted that in order to ascertain whether, there is *prima facie* case made out against the accused for such offences, such ingredients must show *prima facie* involvement of the accused in such crime. Therefore, they prayed for grant of anticipatory bail to the appellants in both the appeals.

8. *Per contra*, learned APP Mr Jadhav vehemently opposed both the appeals and submitted that the appellants are involved in a serious crime. The investigation in the said crime is completed. The appellants are residing in the nearby vicinity and if they released on bail, they may tamper the evidence and prosecution witnesses. The allegations are of serious nature and as such, the appellants do not deserve for grant of bail. He, therefore, prayed for rejection of these appeals.

9. Learned Advocate Mr Tapse Patil for respondent No.3 also vehemently opposed the appeals for grant of anticipatory bail and reiterated the same submissions as made by the learned APP. He also strongly opposed the grant of

anticipatory bail to the appellants.

10. After having heard the learned Advocates for the respective parties and after going through the material available on record including investigation papers made available to me, it is to be seen that whether, the ingredients of the FIR do constitute commission of *prima facie* offence against the appellants.

11. It is to be seen here that the informant was referred to the medical examination after a period of more than 17 hours of the allegations made. Doctor, who examined her has stated as 'NAD' other than red chilly powder entered in her private part, in his medical report. The wording 'NAD' means 'No any Deformity'. In this period of 17 hours, there is no material to show that she had taken any first aid as the allegations of inserting red chilly powder in her private parts is very serious and unable to bear pains. It becomes very difficult to believe that the victim, without taking treatment could manage to bear the pains for the period of 17 hours.

12. There is civil dispute between appellants and informant and mutation entry which came to be recently effected prior to lodging of FIR. The said mutation entry was being opposed by the informant and therefore, the informant in revengeful manner appears to have lodged another false

complaint against the present appellants.

13. The appellants in Criminal Appeal No.513/2025 i.e. accused No.4 in FIR who had been named and alleged to have present at the spot at the time of incident, who in fact had been found away from the spot of incident as per the CCTV footages. This again falsify the story of the complainant and therefore FIR which is lodged against the appellants cannot be said to have made out prima facie offence against them.

14. In paragraph No.9 of the judgment in ***Vilas Pandurang Pawar and another vs. State of Maharashtra, reported in (2012) 8 SCC 795***, the Honourable Supreme Court has observed that the duty is cast on the Court to verify the averments in the complaint and to find out whether, the offence under Section 3(1) of the Atrocities Act has been *prima facie* made out. In subsequent landmark judgment of the Honourable Supreme Court in ***Prathvi Raj Chauhan vs Union Of India reported in AIR 2020 SC 1036***, it has been observed that if the complaint does not make out a *prima facie* case for applicability of the provisions of the Atrocities Act, the bar created by Section 18 and Section 18(A) shall not apply. Further in the very same judgment, the Honourable Supreme Court in paragraph No.32, which is the concurring view of one of the Honourable Judge to

the said judgment, it has been observed that as far as the provision of Section 18A and anticipatory bail is concerned, in cases where no *prima facie* materials exist warranting arrest in a complaint, the court has the inherent power to direct a pre-arrest bail. While considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no *prima facie* offence is made out as shown in the FIR.

15. Another landmark judgment on the issue is delivered by the Honourable Supreme Court in ***Shajan Skaria vs. State of Kerala, 2024 SCC Online SC 2249 : 2024 INSC 625*** wherein, the guidelines for determining the issue as regards “when can it be said that a *prima facie* case is made out in a given FIR/complaint?”, has been elaborately discussed. In paragraph Nos.47 and 48 of this judgment, the Honourable Supreme Court has observed as under:-

“47. *Prima facie* is a Latin term that translates to “at first sight” or “based on first impression”. The expression “where no *prima facie* materials exist warranting arrest in a complaint or FIR” should be understood as “when based on first impression, no offence is made out as shown in the FIR or the complaint”. This means that when the necessary ingredients to constitute

the offence under the Act, 1989 are not made out upon the reading of the complaint, no case can be said to exist prima facie.

48. *As a sequitur, if the necessary ingredients to constitute the offence under the Act, 1989 are not disclosed on the prima facie reading of the allegations levelled in the complaint or FIR, then in such circumstances, as per the consistent exposition by various decisions of this Court, the bar of Section 18 would not apply and the courts would not be absolutely precluded from granting pre-arrest bail to the accused persons.”*

16. Very recently, the Honourable Supreme Court, while advertent on the same issue, was pleased to deliver the judgment in ***Kiran vs. Rajkumar Jivraj Jain and another, 2025 SCC Online SC 1886*** wherein, in paragraph Nos.6.1 and 6.2 following observations are made:-

“6.1 The absolute nature of bar, however, could be read and has to be applied with a rider. In a given case where on the face of it the offence under Section 3 of the Act is found to have not been made out and that the accusations relating to the commission of such offence are devoid of prima facie merits, the Court has a room to exercise the discretion to grant anticipatory bail to the accused under Section 438 of the Code.

6.2 Non-making of prima facie case about the commission of offence is perceived to be such a situation where the Court can arrive at such a conclusion in the first blush itself or by way of the first impression upon very reading of the averments in the FIR. The contents and the allegations in the FIR would be decisive in this regard. Furthermore, in reaching a conclusion as to whether a

prima facie offence is made out or not, it would not be permissible for the Court to travel into the evidentiary realm or to consider other materials, nor the Court could advert to conduct a mini trial.”

17. In view of the above referred guidelines issued by the Hon’ble Apex Court, perusal of the FIR clearly makes it evident that the allegations do not constitute prima facie case against the appellants. Long standing civil dispute between informant and appellants and the other allegations disclose that the informant had deliberately filed false complaint in order to implicate the appellants.

18. In view of the aforesaid facts and circumstances, it can be safely concluded that there is no *prima facie* case made out against the appellants and the custodial interrogation of the appellants is not warranted. Therefore, the instant appeals deserve to be allowed by granting anticipatory bail to the appellants on certain conditions. Hence, the following order:

ORDER

- a) Both the Criminal Appeal stand allowed.
- b) Both the impugned orders in Criminal Appeal No.500/2025 and Criminal Appeal No.513/2025, dated 02/07/2025 and 01/07/2025, respectively, passed by the

learned Additional Sessions Judge, Bhoom, District Dharashiv, in Criminal Bail Application No.95/2025 and 93/2025, respectively, are quashed and set aside.

c) In the event of arrest of the appellants in both the appeals in connection with Crime bearing FIR No.0059/2025 registered on 13/06/2025 with Ambi Police Station, Tq. Bhoom, District Dharashiv for the offences punishable under Sections 64(1), 74, 333, 115(2), 352, 351(2), 351(3), 3(5) of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(2)(va), 3(1)(r), 3(1)(s), 3(1)(w) and 3(1)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they shall be released on furnishing PR bond of Rs.25,000/- [Rupees Twenty Five Thousand Only] each with one solvent surety/ security in the like amount.

d) The appellants shall attend the concerned police station as and when called by the Investigating Officer.

e) The appellants shall not try to contact or pressurize the witnesses or the informant, in any manner whatsoever.

19. However, it is made clear that the observations made in this order are *prima facie* in nature for the purpose of adjudication of this appeal.

sjk

(SUSHIL M. GHODESWAR, J.)