



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

945 CRIMINAL APPEAL NO. 1056 OF 2024

**BALU BHANUDAS KALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
CRIMINAL APPEAL NO. 983 OF 2024**

**1. VITTHAL S/O. DIWAN KORADKAR
2. POPAT S/O. BHANUDAS KALE
3. SAGAR S/O. RAMDAS KALE
4. BILAL S/O. TAYYANUR SHAIKH
VERSUS**

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Appellants : Mr. Narwade Narayan B.
APP for Respondents/State : Mr. K.K. Naik
Advocate for the Respondent No.3 : Mr. Jagtap Adinath B.

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**CORAM : Y.G. KHOBRADE, J.
RESERVED ON : 22.01.2025
PRONOUNCED ON : 31.01.2025**

ORDER:-

1. In both these Appeals, the Appellants have invoked jurisdiction of this Court under Section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and take exception to the orders dated 30.11.2014 and 25.10.2024 passed by the Additional Sessions Judge, Shrigonda in Criminal (Bail) M.A. No.686/2024 and Criminal (Bail) M.A.

No.653/2024. In both these Appeals, the appellants/Accused have prayed for pre-arrest bail in Crime No.614/2024 registered with the Karjat Police Station, District Ahmednagar for the offences punishable under Section 118(1), 126(2), 189(2), 191(2), 190, 352, 351(2) of the Bhartiya Nyaya Sanhita, 2023 and under Sections 3(1)(r)(s), 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. It is evident that, on 08.10.2024, the Crime No. 0614 of 2024 was registered against the Appellants, on the basis of a Report lodged by the informant/Respondent No.3. The Informant alleged that, he was aware of the registration of a crime at Karjat Police Station against Allauddin Shaikh and Balu Kale for allegedly deceiving the landowner, Shri Pandurang Gajarmal. On 08.10.2024 at about 10.30 a.m., he with his friends Mr. Sagar Madane and Mr. Pramod Pavane were proceeding in the Car of Shri Pramod Pavane from Kuldharan to Shrigonda. When their Car reached near Rakshaswadi junction, Mr. Allauddin Shaikh parked his bullet motorcycle across their vehicle. Thereafter, said Mr. Allauddin told to Shri Pramod Pavane to intervene in the dispute between him Shri Pandurang Gajarmal, who lodged report against him and he should support him. Therefore, said Pramod Pavane informed Mr. Allauddin Shaikh that he was not concerned with the said dispute and he (Allauddin) should get settled the said dispute with Shri Pandurang Gajarmal.

But in meanwhile other accused (1) Balu Kale, (2) Vitthal Koradkar, (3) Popat Kale, (4) Sagar Kale, (5) Bilal Shaikh visited at the spot of incident in black colour Scorpio vehicle with Iron rod, wooden log. Accused- Allauddin Shaikh pulled Pramod Pavane from the vehicle and assaulted him. Accused- Balu Kale assaulted Pramod Pavane with iron rod on his head, while Accused- Allauddin Shaikh assaulted him on his back. At that time, the Informant was sitting in the vehicle. Then, Shri Balu Kale instructed him to settle the dispute by persuading Shri Pandurang Gajarmal. Accused- Balu Kale told him (informant) that, he would not purchase the land of Scheduled Caste Category persons and he would take possession of the land. According to the informant, he sustained injuries on his left leg and left hand with iron rod.

3. The Informant further alleged that, Accused- Bilal Shaikh assaulted him on his back with iron rod. Because of the scuffle, people started gathering at the spot, therefore, the assailants fled away. Thereafter, the Informant and Sagar Madane took the injured Pramod Pavane to the Hospital and then he was taken to the Ahmednagar for further medical treatment.

4. The prosecution strongly opposed anticipatory bail. The learned APP canvass that, the offence is of a serious nature and that the investigation is in progress. Due to assault at the hands of the assailants, the informant sustained grievous injuries on his head and eye. Therefore, in order to

recover the weapon and ascertain the enmity, custodial interrogation of the Appellants is necessary, hence, prayed for dismissal of the appeal.

5. On 25.10.2024, the learned Additional Sessions Judge, Shrigonda passed an order holding that, the offence under the Atrocities Act is not made out against the Appellants in Criminal Appeal No. 983/2024. However, as per injury certificate issued by the Maccare Super Speciality Hospital, Ahmednagar, the victim Shri Pramod Pavane sustained grievous injuries on his head. The weapons allegedly used while committing the crime, Bullet Motorcycle and Scorpio Jeep are yet to be recovered. Therefore, custodial interrogation of the Appellants/Accused was necessary, hence, declined to release the Appellants in Criminal Appeal No.983/2024 on anticipatory bail.

6. In Criminal Appeal No.1056/2023, appellant/Accused- Balu Kale with other co-accused Mr. Allauddin Shaikh had filed Cri. (Bail) Misc. Application No.686/2024 and prayed for anticipatory bail in Crime No. 614/2024. On 30.11.2024, the learned Additional Sessions Judge, Shrigonda partly allowed Cri. Bail M.A. No.686/2024 and granted anticipatory bail to co-accused Mr. Allauddin Shaikh but declined to grant pre-arrest bail to the Appellant/Accused Balu Kale.

7. In respect of Cri. Appeal No.983 of 2024 is concerned, on 30.11.2024, the learned Additional Sessions Judge, Shrigonda passed an order in Criminal (Bail) M.A. No.686/2024 and held that, this Court granted Anticipatory Bail to other co-accused (i) Vitthal Koradkar, (ii) Popat Kale, Sagar Kale and (iii) Bilal Shaikh in Criminal Appeal (Stamp) No.12216/2024 and the co-accused have complied with conditions of anticipatory bail and produced the motorcycle, four-wheeler, wooden log, steel pipe, iron rod voluntarily before the Investigating Officer and weapon/vehicles are seized under the seizure Panchanama. Accordingly, Exh.21 Pursis filed in that regard. Therefore, nothing remains to be recovered from the Appellants.

8. It is not in dispute that, on 30.10.2024, this Court in Criminal Appeal No.983/2024 (Stamp) No.12216/2024 (Coram: Shailesh P. Brahme, J.) passed an order and released the Appellants/Accused (Vitthal Koradkar, Popat Kale, Sagar Kale and Bilal Shaikh) on anticipatory bail on certain terms and conditions, which they have complied with, and nothing remains to be seized.

9. No doubt, the Complainant/Respondent No.3 alleged that, the Appellant/Accused- Balu Kale abused him in his cast by saying that, “तुमच्या महाराच्या जमीनी मी ठेवणार नाही. सगळ्या माझे ताब्यात घेतो” and assaulted him on his left leg and left hand with iron rod. Therefore, these allegations appear to

be general in nature pertaining to purchase of land of persons belonging to the Scheduled Caste community. Therefore, to my mind bar under Section 18 and 18A will not be created as per the law laid down in the case of *Prathvi Raj Chauhan V/s. Union of India; AIR 2020 SC 1036*.

10. In case of *Sushila Aggarwal & Ors. V/s. State (NCT of Delhi) & Anr; 2020 (4) Mh.L.J. Cri. (SC) 27*, the Hon'ble Supreme Court held in para 73 as under:

“73. As regards the concern expressed on behalf of the state and the Union—that unconditional orders (i.e. those unrelated to a particular time frame) would result in non-co-operation of the accused, with the investigating officer or authority, or that there would be reluctance to make statements to the prosecution, to assist in the recovery of articles that incriminate the accused (and therefore can be used under Section 27, Evidence Act), this court perceives such views to be vague and based apparently pre-conceived notions. If there is non-cooperation by an accused – in the course of investigation, the remedy of seeking assistance of the court exists. Moreover, on this aspect too, Sibbia had envisioned the situation; the court had cited *State of U.P. v Deoman Upadhyaya, 1961 (1) SCR 14*, where this court had observed as follows:

“When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody : submission to the custody by word or action by a person is sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer within the meaning of Section 27 of the Indian Evidence Act : Legal Remembrancer v Lalit Mohan Singh(1921) I.L.R. 49 Cal.167), Santokhi Beldar v. King Emperor (1933) I.L.R. 12 Pat.241). Exceptional cases may certainly be imagined in which a person may give information without presenting

himself before a police officer who is investigating an offence. For instance, he may write a letter and give such information or may send a telephonic or other message to the police officer.”

This view was reiterated and applied in Vallabhdas Liladhar v Asst. Collector of Customs, 1965 (3) SCR 854. The observations in Sibbia(supra) are relevant, and are reproduced again, for facility of reference:

“One of such conditions can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v Deoman Upadhyaya.”

Therefore, the “limited custody” or “deemed custody” to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail.”

11. Therefore, considering the story of crime narrated in FIR as well as no recovery of weapon is remained to be effected, hence, it would be just and proper to continue the ad-interim bail granted in Criminal Appeal No. 983/2024 on 30.10.2024 during the pendency of the trial.

12. In Criminal Appeal No.1056/2024 the Appellant/Accused allegedly abused the Informant by saying “तुमच्या महाराच्या जमीनी मी ठेवणार नाही. सगळ्या माझे ताब्यात घेतो” and issued threats. So also, the present Appellant/Accused- Balu Kale assaulted the injured Pramod Pahune with iron

rod on the head. The Investigating Officer has already recovered all the weapons/vehicles used while committing the crime. Therefore, considering the role played by the Appellants-Accused while committing the crime, no further custodial interrogation is necessary. Therefore, considering the principle of parity with the role played by the other accused, I am of the view that the Appellant/Accused Balu Kale is entitled to anticipatory bail as prayed.

ORDER:

- i) In the event of arrest the Appellant/Accused- Balu Kale in Cri. Appeal No.1056/2024 be released on bail on furnishing PR of Rs.25,000/- with two solvent sureties in the like amount in Crime No.614/2024 registered with Karjat Police Station, District Ahmednagar for the offence punishable under Section 118(1), 126(2), 189(2), 191(2), 190, 352, 351(2) of the Bhartiya Nyaya Sanhita, 2023 and under Section 3(1)(r)(s), 3(2) (va) of the the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.
- ii) The Appellant shall cooperate with the concerned Investigating Officer during the investigation and shall attend the concerned police station as and when called by the Investigating Officer.

iii) The interim order granted by this Court on 30.10.2024 in Criminal Appeal No.983/2023 Stamp No.12216/2024 shall continue during the pendency of the trial.

iv) Accordingly, both the Appeals are hereby disposed of.

[Y.G. KHOBRADE, J.]

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