



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

47 CRIMINAL APPLICATION NO. 5040 OF 2024

1. Nana @ Narayan S/o Baburao Kadam
Age: 45 Years, Occu: Agri (Orig. accused no.3)
2. Madhukar S/o Dattrao Kadam
Age: 38 Years, Occu: Agri (Orig. accused no.4)
3. Daulat S/o Manik Kadam
Age: 26 Years, Occu: Agri (Orig. accused no.5)
4. Bharat S/o Vyankati Kadam
Age: 33 Years, Occu: Agri (Orig. accused no.6)
5. Narayan S/o Mugaji Kadam
Age: 66 Years, Occu: Agri (Orig. accused no.7)
6. Avinash S/o Naroji Kadam
Age: 32 Years, Occu: Agri (Orig. accused no.8)
7. Dilip S/o Yashwant Kadam
Age: 50 Years, Occu: Agri (Orig. accused no.9)
8. Gajanan S/o Pandurang Kadam
Age: 45 Years, Occu: Service (Orig. accused no.10)
9. Maroti S/o Ramrao @ Raju Kadam
Age: 29 Years, Occu: Advocate (Orig. accused no.11)

All R/o. Loleshwar, Tal. Basmath,
Dist. Hingoli.

... Applicants

Versus

1. The State of Maharashtra
Through District Superintendent of Police,
Hingoli.
2. Police Station Kurunda,
Tal. Basmath, Dist. Hingoli.
3. Uttam Sakharam Wahule
Age: 38 Years, Occu: Agri,
R/o. Loleshwar, Tal. Basmath,
Dist. Hingoli.

... Respondents

...

Mr. Akshay Raosaheb Dhore, Advocate for Applicants.

Mr. S. A. Gaikwad, APP for Respondent Nos.1 & 2.

Ms. Anita Gadekar, Advocate for Respondent No.3 (Appointed through Legal Aid).

...

CORAM : **SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 14th August, 2025.

Per Court:

. Present application has been filed for quashment of the FIR vide C.R. No.424 of 2024, dated 22nd September, 2024, registered with Kurunda Police Station, Taluka Basmath, District Hingoli, for offence punishable under Sections 115(2), 118(1), 118(2), 189(2), 190, 191(2), 191(3), 351(2) and 352 of Bhartiya Nyaya Sanhita and the offence punishable under Sections 3(1)(r), 3(1)(s), 3(2)(v) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2 Heard the learned counsel for the applicants, the learned APP for respondent Nos.1 and 2 and the learned counsel appointed through Legal Aid to represent the cause of respondent No.3.

3 The learned counsel appearing for the applicants has taken us through the FIR and submits that the allegations about the incident, which had taken place around 01:00 pm on 22nd September, 2024, are stated to be in the field belonging to respondent No.2 and the incident has not been witnessed or the alleged abuses in the name of caste were not heard by an independent witness. The allegations are mainly against accused No.1 and as against the present applicants, it is stated that non-cognizable offences in the nature of giving slaps have been alleged. The present applicants, being the relatives, have been falsely implicated.

4 Learned APP for respondent Nos.1 and 2 as well as the learned counsel appointed through Legal Aid to represent the cause of respondent No.3 strongly oppose the application and submit that the investigation is still incomplete and charge-sheet is not filed. Therefore, this is not the proper stage where the powers under Section 528 of BNSS can be exercised. Furthermore, the allegations are in respect of unlawful assembly and therefore, each member would be

liable for the act of the other member.

5 Perusal of the FIR lodged by present respondent No.2 would show that he had gone to the field at 01:00 pm on 22nd September, 2024. He found that cattle were allowed to graze in his field by accused Sudam Kadam. When the informant asked him about the same and told that there is damage caused to the crops, he abused the informant. He also used the words insulting his caste and gave threats. Thereupon, accused Kundalik Kadam assaulted the informant with the means of stick on his left thigh and right hand, causing him swelling injury. Accused No.1 had then assaulted him with a small-sized sword on head, causing him bleeding injury. It is then stated that the present applicants came by forming unlawful assembly and started abusing him in the name of caste and giving threats. He was slapped and assaulted with fists. He rescued himself and went home and thereafter, by taking his brother with him, he went to civil hospital Vasmata and then lodged the FIR.

6 Though the FIR is not the encyclopedia, yet it is to be noted here in the present case that the informant was the best person to state as to who was present at the time of the incident. The FIR is silent about the name of the witnesses, who were present. In view of ***Hitesh Verma Vs. State of Uttarakhand and another, (2020) 10***

Supreme Court Cases 710, the alleged incident should be witnessed by an independent witness not being the relative or friend. Under such circumstance, as against the present applicants, the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, cannot be said to be made out. However, taking into consideration those allegations, offence under Sections 189(2), 190 and 191(2) of BNS are certainly made out, which are cognizable offences and then it would be for the prosecution to prove that when the offence under Sections 115(2), 118(1) of BNS were made out, there was the unlawful assembly or it was formed after the said offence. However, in that case, the quashment of the FIR for the offences under BNS cannot be granted.

7 Case is made out for allowing the application partly.
Hence, the following order is passed:-

ORDER

- I. The application is partly allowed.
- II. The FIR vide C.R. No.424 of 2024, dated 22nd September, 2024, registered with Kurunda Police Station, Taluka Basmath, District Hingoli, stands quashed and set aside as against the applicants, for offence punishable under Sections 3(1)(r), 3(1)(s), 3(2)(v) and 3(2)(va) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act.

- III. We clarify that the offence would remain and the investigation to go on for the offences under the Bhartiya Nyaya Sanhita.

nga

[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]