

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.557 OF 2025

Ramji Harakhchand Shah

... Appellant

V/s.

State of Maharashtra and Anr.

... Respondents

Mr. Rishi Bhuta a/w Mr. Yogesh Devnani a/w Mr. Omkar Mulekar a/w Khushbu Shah, a/w Mr. Chirag Hathiranani a/w Mr. Rishikesh Mishra for the Appellant.

Mr. Yash Vora, a/w Mr. Ruchika Deora for the Intervener.

Ms. Mahalaxmi Ganapathy, APP for the State.

Mr. Navkar Jain, for the Respondent No.2.

Mr. Dattatray Dhole, ACP, Dindoshi Police Station, Mumbai.

CORAM : ASHWIN D. BHOBE, J.

DATED : 6th JUNE, 2025

(VACATION COURT)

P.C.:

1. Heard Mr. Rishi Bhuta for the Appellant. Ms. Mahalaxmi Ganapathy, for the State and Mr. Navkar Jain, learned Advocate for the Respondent No.2.

2. By the present appeal under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989 (referred to as the "Prevention of Atrocities Act"), the

Appellant assails the order dated 16.05.2025 passed by the Additional Sessions Judge Dindoshi Mumbai (learned Judge), in Anticipatory Bail Application No.647 of 2025, by which the learned Judge has rejected the said application on the ground of the bar under Section 18 and 18-A of the Prevention of Atrocities Act.

3. Case of the prosecution is that the Secretary of the Society had arranged a meeting with the Appellant (Developer/Builder) and others in the office of Appellant at Malad Mumbai. Secretary of the Society, informed the Respondent No.2 to remain present for the said meeting scheduled on 16.04.2024. On the day of meeting, the Respondent No.2 reached the main entrance of the building. Appellant alighted from his car. At that time there was an altercation between the Appellant and the Respondent No.2. During the course of the said altercation, the Appellant is said to have hurled abuse on caste of the Respondent No.2. Said abuse is said to have been in the presence of the member of the society, the sister-in-law of the Respondent No.2 and the driver of the Appellant. As such, Crime No.274 of the 2025 for the offence punishable under Section 3(1)(s) of the Prevention of Atrocities Act and Section 130, 352, 3(5) of the Bhartiya Nyaya Sanhita, 2023(BNS), came to be registered with the Dindoshi Police Station, on 29.04.2025.

4. Anticipatory Bail Application No. 647 of 2025, filed by the Appellant was rejected by the Additional Sessions Judge City Civil and Sessions Court, Borivali Division Dindoshi, Goregaon Mumbai on 16.05.2025 by holding the Anticipatory Bail

Application was not maintainable as the prosecution had made out prima facie case for applicability of Section 3(1)(s) of the Prevention of Atrocities Act (Impugned order).

5. Mr. Rishi Bhuta, learned Advocate for the Appellant submits that there is no prima facie material placed on record to attract the provisions of the Prevention of the Atrocities Act and therefore it is his contention that the bar under Section 18 and 18-A of the Prevention of Atrocities Act is not attracted, consequently application under Section 482 of Bhartiya Nyaya Suraksha Sanhita, 2023 (BNSS) is maintainable. He submits that even if the allegations are considered then the ingredients of the Section 3(1)(s) of the Prevention of Atrocities Act is not attracted. He submits that there are CCTVs installed by the Society in the area where the alleged incident is said to have occurred and the said incident is captured in the said CCTV. He submits that the CCTV cameras are equipped with audio recording facility. He states that on 16.05.2025 it is the Appellant who had filed a complaint against the Respondent No.2. He submits that the Appellant has submitted a pendrive of the recordings captured by the CCTV to the Respondent No.1 along with a covering letter dated 19.04.2025. By referring to the FIR he submits that, even if the allegations in respect of hurling of abuse of caste is considered, then in such an event also the same do not indicate an intention of the Appellant of insulting or humiliating the Respondent No.2. He submits that the other offences alleged are not grave or serious. He submits that the Appellant has co-operated and is ready to co-operate. He therefore, submits that custodial interrogation is not required. He

submits that the Impugned order suffers from perversity and is required to be set aside. He prays that the present application be allowed.

6. Ms. Mahalaxmi Ganapathy, learned APP for the State, submits that the ingredients of Section 3(1)(s) of the Scheduled Castes Prevention of Atrocities Act is clearly made out from the complaint filed by the Respondent No.2. She submits that the offence alleged is in presence of the public as such the bar under Section 18 and 18-A of the Prevention of Atrocities Act stands attracted. She submits that the Investigation Officer has attached the CCTV footage of the incident. By pointing out the reasons in the Impugned order, she submits that no interference is called in the present appeal.

7. Mr. Navkar Jain, learned Advocate for the Respondent No.2 submits that his complaint records the abuse hurled by the Appellant with reference to his caste and therefore the ingredients of the offence are clearly made out. He submits that the Appellant is in a habit of committing such offences and there are criminal antecedents of the Appellant. He therefore, opposes the appeal.

8. I have given due consideration to the arguments advanced by the learned Advocates and gone through the records with the able assistance of the learned Advocates.

9. From the rival contentions of the parties, the point that fall for consideration is whether the complaint *prima facie* discloses the essentials of offence under Section 3(1)(s) of the Prevention of Atrocities Act?

10. Provision of Section 3(1)(s) of the Prevention of Atrocities Act is transcribed here under:

“3(1) Whoever, not being a member of Scheduled Caste or a Scheduled Tribe:-

(s) Abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

11. To constitute offence under Section 3(1)(s) of the Prevention of Atrocities Act, the incident must be in a place within public view. Expression within public view connotes that the alleged offence committed in any place should be visible/audible to the public. The Division Bench of this Court in the case of Dr. Manli Vs. Makarand Kshirsagar Vs. State of Maharashtra¹ has held that incidents of insult or intimidation has to occur in a place accessible to and in presence of public and presence of both these ingredients is absolutely necessary to constitute offence under the said provision of law.

12. In the case of Karuppudayar Vs. State Rep. By the Deputy Superintendent of Police Lalgudi Trichy and Ors.², the Hon'ble Supreme Court has considered the term “any place within public view”. Paragraph Nos. 9, 10 and 11 are transcribed herein under:

“9. A perusal of Section 3(1)(r) of the SC-ST Act would reveal that for constituting an offence thereunder, it has to be established that the accused intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Similarly, for

¹ Criminal Application No.477 of 2019

² (2025) SCC OnLine SC 2015

constituting an offence under Section 3(1)(s) of the SC-ST Act, it will be necessary that the accused abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view.

10. The term “any place within public view” initially came up for consideration before this Court in the case of Swaran Singh v. State through Standing Counsel². This Court in the case of Hitesh Verma v. State of Uttarakhand³ referred to Swaran Singh (supra) and reiterated the legal position as under:

“14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as Swaran Singh v. State [Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527]. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (sic) [Ed. : This sentence appears to be contrary to what is stated below in the extract from Swaran Singh, (2008) 8 SCC 435, at p. 736d-e, and in the application of this principle in para 15, below: “Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view.”]. The Court held as under : (SCC pp. 443-44, para 28)

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place

can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”

(emphasis in original)”

11. It could thus be seen that, to be a place ‘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.”

13. In the case of Shajan Sharia Vs. State of Kerala and Anr³., the Hon'ble Supreme Court while dealing with the provisions of the Prevention of the Atrocities Act, in paragraph No.52 has observed as under.

“52. ... The entire incriminatory material based upon which the complaint came to be lodged was available in the public domain by virtue of having been uploaded on social media platforms. We had the occasion to threadbare go through the transcript of the YouTube video. We may only say that in cases like the one in hand, the courts should have the discretion to look into the materials based upon which the complaint has been registered, in addition to verifying the averments made in the complaint. If on a prima facie reading of the materials referred to in the complaint and the complaint itself, the ingredients necessary for constituting the offence are not made out, then the bar of Section 18 would not be applicable and it would be open to the courts to consider the plea for the grant pre-arrest bail on its own merits.”

14. Guided by the decision of the Hon'ble Supreme Court in the case of Shajan Sharia (supra), this Court found it appropriate to call upon the Investigation Officer to view the CCTV footage which the Appellant had submitted along with his letter dated 19.04.2025 as also the CCTV footage, which the Investigation Officer has recovered during the course of investigation and to

report in the context of the alleged hurls of abuse on caste.

15. The Investigation Officer after having viewed, the CCTV footage, has made a statement before this Court that there is disturbance in the audio during the time the abuse on caste is sought to have happened. He clarifies that the words which are alleged to be used by the Appellant in reference to the caste of the Respondent No.2, are not audible and it cannot be said by certainty whether such words were used from the said CCTV footage.

16. In the case of Afsamaskar Laikhkan Pathan and Ors. Vs. State of Maharashtra and Anr.⁴, the Division Bench of this Court while considering the provisions of the Section 3(1)(r) and 3(1)(s) of the Prevention of the Atrocities Act has observed as follows:

“23. ... The question that falls for consideration is whether these alleged acts on the part of Applicants 1 to 4 will attract the rigours of Sections 3(1)(r) and 3(1)(s) of the Atrocities Act. Section 3(1)(r) is attracted when a member of Scheduled Caste is intentionally insulted or intimidated with an intention to humiliate him/her in any place within “public view”. Likewise Section 3(1)(s) is attracted when a member of Scheduled Caste or Scheduled Tribe is abused by the name of caste in any place within a “public view”. Perusal of the said provisions would indicate that mere insult or intimidation with a view to humiliate or hurling abuses in the name of caste will not constitute an offence under the said provisions. The offence under the said provisions will be made out only if such act of insult/intimidation with a view to humiliate and/or abuse in the name of caste is in public view. It will be pertinent to mention here that the incident need not be in a public place. It has to be in public view.”

17. From the nature of the allegations, there appears to be an altercation between the Appellant and the Respondent No.2, which is alleged to be in the presence of the sister-in-law of Respondent

⁴ (2025) SCC OnLine Bom 73

No.2, a Society member and the driver of the Appellant. The FIR does not indicate that the said incident was witnessed by any person other than those associated with the Appellant and the Respondent No.2. The FIR *prima facie* does not indicate the Appellant having committed the offence as alleged, with an intention of insulting or humiliating a member of the Scheduled Caste or Scheduled Tribe

18. Considering the said allegations in the crime and the CCTV footage, *prima facie* it cannot be said that the incident had occurred within public view. *Prima facie* the FIR does not disclose the essential ingredients of the offence punished under Section 3(1)(s) of the Prevention of Atrocities Act, consequently, the bar under Section 18 and 18-A is not applicable, as such the learned Judge was not justified in rejecting the application for anticipatory bail. Other offences under the BNSS are not grave as to warrant custodial interrogation. In such circumstances, it would be appropriate to direct the Appellant to join the investigation. Custodial interrogation of the Appellant in the facts and circumstances of the case is not warranted.

19. In view of the above, following order is passed:

- a) Appeal is allowed. The Impugned order dated 16.05.2025 passed by the Additional Sessions Judge City Civil and Sessions Court, Borivali Division Dindoshi, Goregaon Mumbai in Anticipatory Bail Application No.647 of 2025 is quashed and set aside.
- b) In the event of arrest of the Appellant in Crime No.274

of the 2025 registered with Dindoshi Police Station Mumbai, the Appellant shall be released on bail furnishing PR bond of Rs.25,000/- with one or two sureties in the like amount.

c) Appellant shall attend and report to the Investigation Officer Dindoshi Police Station on Friday of each week commencing from 13.06.2025. Appellant shall continue to report till the filing of the charge-sheet before the concerned Court.

d) Appellant shall co-operate with the investigation.

e) Appellant shall not threaten or influence any of the witnesses/Respondent No.2 or tamper with the evidence.

f) Appellant shall furnish his residential address along with proof contact details and mobile numbers to the Investigation Officer Dindoshi Police Station.

20. Criminal Appeal No.557 of 2025 is allowed in the above said terms.

(ASHWIN D. BHOBE.)