



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.570 OF 2024

1. Prajwal s/o Gajanan Sonone
Aged about 25 years,
Occupation – Business,
R/o Anand Nagar, Hingna Phata,
Akola, Tq. and District Akola
2. Ganesh Shyamrao Tikar,
Aged about 40 years,
Occupation – Labourer,
R/o V.H.B. Colony,
Gorakshan Road, Akola
Tq. and District Akola

...APPELLANTS

VERSUS

1. State of Maharashtra,
through P.S.O., P.S. Khadan
Akola
2. Sau. Bharati Buddhapas Sadanshiv
Aged 40 years, Occupation – Household,
R/o. Bajoriya Nagari,
Nalanda Vachanalaya, Khadan, Akola
Tq. and District Akola

...RESPONDENTS

Mr. B.K. Suchak, Advocate a/w Mr. K.H. Anandani, Advocate for the appellants.
Mr. A.M. Ghogare, A.P.P for the State.
Ms V. Warade, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 24, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. By preferring this appeal, the appellants have challenged the order dated 27/09/2024 passed by the Additional Sessions Judge and Special Judge SCST Atrocity, Akola in Criminal Bail Application No.594 of 2024 by which the application for anticipatory bail of the appellants was rejected.

3. The appellants are apprehending the arrest at the hands of police in connection with Crime No.600/2024 registered at police station Khadan, Akola, District Akola for the offence punishable under Sections 109, 190, 191(3), 74, 351(2), 352 of the Bharatiya Nyaya Sanhita (BNS), 2023.

4. Learned Counsel for the appellants submitted that the FIR is lodged on the basis of report lodged by Bharti Buddhapas Sadashiv alleging that her husband is an ex-serviceman and one Gajanan Sonone has purchased a plot near his house, and therefore, there was a dispute on account of boundaries of the said plot between said Gajanan Sonone and the husband of the informant. It is alleged that on 11/08/2024 at about 2.45 PM present appellants along with the other co-accused came

in front of their house and abused them on their caste as well as assaulted them by means of iron pipe as well as fist and kick blows. On the basis of the said report, police have registered the crime against the present appellants.

5. Learned Counsel for the appellants submitted that as far as the allegation against appellant No.1 is concerned which is to the extent of assault by fist and kick blows and appellant No.2 whose only presence is mentioned as per the recitals of the FIR. So no overt act is attributed to them. Moreover, there is no statement that they were aware that the informant and her husband belongs to the scheduled caste and scheduled tribes. He submitted that as there is no *prima facie* case reveals from the FIR, therefore, the bar under Section 18 is not attracted. In view of that, the interim protection granted to the present appellants deserves to be confirmed.

6. Learned APP and learned Counsel for respondent No.2 strongly opposed the appeal and submitted that considering the allegation there is a bar under Section 18 of the Act, and therefore, no interference is called for. Hence, the appeal deserves to be dismissed.

7. I have heard learned Counsel for both the parties. Perused the recitals of the FIR from which it reveals that there was a dispute

between both the families on account of the boundary of the plot. The appellants have already filed an application as far as the encroachment is concerned which is under the consideration. As far as the allegations are concerned, appellant No.1 allegedly assaulted the informant and her husband by fist and kick blows on chest whereas there is no specific allegation against appellant No.2 but his presence is mentioned. Considering the role attributed to the present appellants, immediate custodial interrogation is not required as nothing is to be seized from them. The observation of the Hon'ble Apex Court as far as the application of Section 3(1)(r) of the Atrocities Act in the case of *Shajan Skaria Vs. The State Of Kerala & anr. in Criminal Appeal No.2622 of 2024 (arising out of SLP (CRL.) No.8081 of 2023)* decided on 23.08.2024 wherein it is held that all insults or intimidations to a member of the Scheduled Caste or Scheduled Tribe will not amount to an offence under the Act, 1989 unless such insult or intimidation is on the ground that the victim belongs to Scheduled Caste or Scheduled Tribe. The various decisions which are considered by the Hon'ble Apex Court and it is further held that the purport of the Act, 1989 and held that it is not the purport of the Act, 1989 that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the

Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe.

8. Considering the law laid down by the Hon'ble Apex Court and the recitals of the FIR, no *prima facie* case is made out against the appellants, and therefore, the bar under Section 18 is not attracted. Hence, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The appeal is allowed.

(ii) The order dated 27/09/2024 passed by the Additional Sessions Judge and Special Judge SCST Atrocity, Akola in Criminal Bail Application No.594 of 2024 is hereby quashed and set aside.

(iii) In the event of arrest, the appellants – 1) Prajwal s/o Gajanan Sonone and 2) Ganesh Shyamrao Tikar in connection with Crime No.600/2024 registered at police station Khadan, Akola, District Akola for the offence punishable under Sections 109, 190, 191(3), 74, 351(2),

352 of the Bharatiya Nyaya Sanhita (BNS), 2023, be released on anticipatory bail on executing a P.R.Bond in the sum of Rs.25,000/- each with one solvent surety each, in the like amount.

(iv) The appellants shall attend the concerned police station once in a week i.e. on every Tuesday between 10.00 a.m. and 1.00 p.m. and shall cooperate with the investigating agency.

(v) The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

9. The contravention of any of the condition would lead to the cancellation of bail.

10. The appeal is disposed of.

11. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)