



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

CRIMINAL APPEAL NO. 934 OF 2025

- 1) Shaikh Anees Shaikh Ibrahim,
Age ; 62 years, Occ; Business,
R/o; Khaja Colony, Near Asha Hotel,
Jintur Road, Parbhani, Tq. & Dist. Parbhani.
- 2) Shaikh Mohammad Aser Shaikh Mohammad Yusuf,
(In FIR name as Asef Patel Yusuf Patel)
Age; 36 years, Occ; Advocate,
R/o; Near Gore Hospital, Kalabawar,
Parbhani, Tq. & Dist. Parbhani.
- 3) Daraksha Shaikh Gouhar,
Age; 22 years, Occ; Housemaker,
R/o. Basera Colony, Kawadgaon Gate,
Kawadgaon Road, Parbhani,
Tq. & District Parbhani.

..APPELLANTS

(Orig. Accused Nos. 1, 2 &

VERSUS

- 1) State of Maharashtra,
Through Officer In-charge,
Police Station Nanalpeth,
Tq. & Dist.Parbhani.
- 2) The Superintendent of Police,
Parbhani, District Parbhani.
- 3) Atul Gopinathrao Sarode,
Age; 45 years, Occ; Social work & Agri.
R/o; Ramdas Nagar, Karegaon Road,
Parbhani.

...RESPONDENTS

**(Respdt. No. 3 is alleged victim of
atrocitiy).**

...
Advocate for the Appellants : Mr. S.J. Salunke
APP for Respondent Nos. 1 & 2/State : Mr. V.M. Chate
Advocate for Respondent No. 3 : Mr. R.J. Nirmal
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CORAM : Y.G. KHOBRAGADE, J.

RESERVED ON : 29.01.2026

PRONOUNCED ON : 03.02.2026.

ORDER:

1. By the present appeal under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short “Atrocities Act”) r/w Section 482 of the Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023, (for short “the BNSS”), the present appellants take exception to the order dated 04.12.2025 passed by the learned Additional Sessions Judge-2 and Special Judge, Parbhani, District Parbhani, thereby, declined to enlarge the appellants/accused on anticipatory bail in connection with Crime No. 718 of 2025, for the offences punishable under Sections 189(2), 190, 115(2), 351(2) of the Bhartiya Nyaya Sanhita, 2023 and Section 3(1)(r), 3(1)(s) and 3(2)(v-a) of the Atrocities Act.

2. It is the case of the prosecution that, on 22.11.2025,

respondent no. 3/informant lodged an oral report alleging that, there is an old ongoing civil dispute concerning the Plot No. 114, City Survey No. 813, situated within the jurisdiction of the Parbhani Municipal Corporation. He purchased the said plot on 08.07.2025. The Regular Civil Appeal bearing No. 124 of 2012 was also filed pertaining to the said plot. (Wrongly mentioned as RCA No. 24 of 2012 in the order dated 14.12.2025). On 12.12.2018, the said appeal was decided in favour of one Gautam Pandurang Bhalerao, he is in possession of the said plot from the date of purchase of the plot. However, he entered into an agreement for sale of said plot with Ahesan Khan s/o Abdul Rajjak and Nagesh Gangadhar Dhembre.

3. On 21.11.2025, at about 10.30 p.m., he and Ahesan Khan were cleaning the said plot, and at that time suddenly appellant no.1/accused Shaikh Anees s/o Shaikh Ibrahim, no. 2 Asef Patel s/o Yusuf Patel, no. 3 Daraksha Gauhar d/o Shaikh Anis and Bilal Ahmed Khan s/o Aliyar Khan, visited at said plot in auto rickshaw. Thereafter, all the accused persons rushed on the person of the informant and Ahesan Khan assaulted them. The accused, Shaikh Anis and Asef Patel, questioned him as to why he entered into an agreement to sell of said plot in favour of Ahesan Khan and stated that they were

intending to purchase the said plot. The accused Shaikh Anis abused him by making caste-based remarks and spit on his person. The appellant no.2- Shaikh Mohammad Asef Shaikh Mohammad Yusuf caught hold of his collar and pushed him on the ground and gave a punch on his back and uttered words, “ढेडगे तुझे झूठे केस मे बहोत बुरा फसा दुंगा”. The appellant no.3 Daraksha Gauhar d/o Shaikh Anis also abused him in filthy language by saying that, “भडवे तु हमारी जगह छीनके बेच रहा क्या, तुझे मारना पडेगा”. At that time, the appellant no.1 Shaikh Anis s/o Shaikh Ibrahim also abuse him on his caste. So also, one Bilal Ahmed Khan, who accompanied the accused persons pushed him on the road and issued life threats. Thereafter, some bypassers, Umesh Waghmare and (Buddhist Monk) Bhante Muditanand intervened and separated them. On the basis of said report, Crime bearing No. 718 of 2025 registered against the present appellants/accused and others.

4. Thereafter, the appellants filed Criminal Bail Application bearing No. 893 of 2025 before the learned trial Court and prayed for anticipatory bail in connection with Crime No. 718 of 2025, registered with Nanalpeth Police Station, Parbhani. On 04.12.2025, the learned trial Court passed the impugned order and rejected the anticipatory

bail, hence, this appeal is filed seeking anticipatory bail.

5. Adv. S. J. Salunke, the learned counsel appearing for the appellants canvassed that, the appellant no.1- Shaikh Anees had filed a Regular Civil Appeal bearing No. 124 of 2012 before the District Judge-2, Parbhani, arising out of the judgment and decree dated 03.09.2011 passed by the learned Civil Judge Senior Division, Parbhani, in Special Civil Suit bearing No. 25 of 2025. The learned Appellate Court passed the judgment and decree on 03.09.2011 and perpetually restrained the defendants i.e. respondents in Regular Civil Appeal No.124 of 2012 from obstructing the possession of the present appellants over the plot ad-measuring 20 x 15 and 10 x 15 sq.ft. known as 'Asha Hotel' and 'Asha Raswanti Gruh' over the property. Therefore, it *prima facie* shows that there is long standing civil dispute over possession of the property between the appellants and respondent no.3 as well Mr. Gautam Pandurangrao Bhalerao, who claimed ownership over the said plot.

6. The learned counsel appearing for the appellants further canvassed that, Shri Gautam Bhalerao had lodged a report on 14.09.2022 against the present appellant no.1 and another accused

alleging about abusement on his caste. However, after conclusion of the trial, the Special Court passed the judgment and order on 30.01.2024, and acquitted the present appellant no.1/accused and others for the offence punishable under Section 504 and 34 of the Indian Penal Code and under Sections 3(1)(x), 3(1)(v), 3(1)(iv) of the Atrocities Act. However, again respondent no.3, who is not concerned with the said plot lodged a false report in question, though the appellants were not present at the spot of incident as alleged by respondent no.3 and on the basis of said false report the Crime No.718 of 2025 was registered against the present appellants/accused.

7. It is further canvassed that, on 22.11.2025 the present appellant no.1- Shaikh Anis Shaikh Ibrahim lodged First Information Report alleging that, on 22.11.2025, at about 2.00 a.m., he observed CCTV footage on his mobile phone about visit of one Dharmapriya Bhalerao, Buddhpriya Bhalerao and Atul Sarode alongwith five to six other persons in an auto rickshaw in front of his Hotel and when he visited there, the accused persons issued life threats to him. So also, the accused cut lock of shutter and illegally entered in his hotel and took away Rs.1,800/- from his hotel. However, on 22.11.2025, the

respondent no. 3/informant lodged First Information Report No. 718 of 2025 (for short “the FIR”), which is a counter blast FIR to the FIR bearing No.715 of 2025 lodged by him. Therefore, the learned Counsel appearing for the appellants/accused canvassed that the incident which has been narrated in the FIR No. 718 of 2025 is false and the accused persons never abused the respondent no.3/informant on his caste and no such incident occurred, therefore, the appellants are entitled for anticipatory bail.

8. It is further canvassed that the appellant no.3 is a married lady having sucking child. The appellant nos.1 and 2 are respectable persons in the society. The appellants are ready and willing to co-operate with the Investigating Officer and nothing remained to be seized from these appellants. Further, the incident narrated in FIR No.718 of 2025 has not occurred within the public view, therefore, Section 18 of the Atrocities Act does not create bar under Section 438 of the Code of Criminal Procedure to enlarge the appellants/accused on anticipatory bail.

9. In support of these submissions, the learned counsel placed reliance on the case of *Hitesh Warma Vs. The State of*

Uttarakhand, AIR 2020 SC 5584, wherein, the Hon'ble Supreme Court held as under:

“15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh, it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.

16. There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act

unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe,

17. In another judgment reported as Khuman Singh v. State of Madhya Pradesh, this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under:

“6 2019 SCC OnLine SC 1104 : (AIR 2019 SC 4030)

“15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to “Khangar”-Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.”

18. *Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out”.*

10. It further relied on the case of ***Prathvi Raj Chauhan Vs. Union of India and Ors, (2020) 4 SCC 727***, wherein it has been held as under:

“While considering the application seeking pre-arrest bail, the High Court has to balance of interest i.e. the powers has not to so used as to convert the jurisdiction into that under Section 438 of the Code of Criminal Procedure, but that is used sparingly and such orders made in very exceptional cases where the prima-facie offence is made out as shown in the FIR, and further also is that if such orders are not made in those classes of cases, the result would be inevitably be a miscarriage of justice and the abuse of process of law.”

11. Per-Contra, Mr. V. M. Chate, the learned Assistant Public Prosecutor appearing for the respondent nos.1 & 2 supported

findings of the learned trial Court. The learned APP canvassed that the Respondent No. 3 is a member of Schedule Caste community and said fact is within the knowledge of the appellants. As per the contents of the FIR, the incident of abusing the informant/respondent no.3 on his cast occurred within the public view at the vacant plot and abutting the public road at about 11.30 p.m. The appellant no.1-Shaikh Anis also spitted on the person of the informant and issued life threats. Further, other accused assaulted the respondent no.3/informant with fist and kick blows and issued life threats. Therefore, as per the provisions of Section 18 of the Atrocities Act, the bar is created under Section 438 of the Criminal Procedure Code, (for short “the Cr.P.C.”) to enlarge the appellants/accused on bail.

12. The learned APP further canvassed that, on 25.11.2025, the appellants/accused instituted the Criminal Bail Application No. 893 of 2025 seeking anticipatory bail in Crime No.718 of 2025. However, on the same date i.e. on 26.11.2025, when the respondent no.3/informant was proceeding towards his house and reached in front of Sub Registrar’s Office, Kabrasthan Road at about 10.00 hours at that time the appellants/accused stopped him and threatened to withdraw the FIR lodged against him for the offence punishable under

Atrocities Act, failing which he will not leave him. Therefore, a N.C. case bearing no. 413 of 2025 registered against the accused no.1 with Mondha Police Station for the offence punishable under Sections 351(2) of the Bhartiya Nyaya Sanhita. Therefore, considering the abusement to the respondent no.3/informant on his caste in the public view, the appellants are not entitled for anticipatory bail.

13. In support of these submissions the learned APP placed reliance on ***Kiran v. Rajkumar Jivraj Jain and Another, 2025 SCC OnLine SC 1886***, wherein in paragraph Nos. 6, 6.1 and 6.2 the Hon'ble Supreme Court observed as under :

“6. In the light of parameters in relation to the applicability of Section 18 of the Act emanating from afore-discussed various decisions of this Court, the proposition could be summarised that as the provision of Section 18 of the Scheduled Caste and Scheduled Tribes, Act, 1989 with express language excludes the applicability of Section 438, Cr.P.C. it creates a bar against grant of anticipatory bail in absolute terms in relations to the arrest of a person who faces specific accusations of having committed the offence under the Scheduled Caste and Scheduled Tribe Act. The benefit of anticipatory bail for such an accused is taken off.

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”.

14. The learned counsel appearing for the respondent no.3/informant supported the arguments canvassed by the learned APP for respondent/state. He canvassed that respondent no.3/Informant is the best witness, who had seen the incident narrated in the FIR. The respondent no.3/informant specifically attributed the role of each and every accused persons in the FIR. The informant specifically alleged that, the accused no.1 abused him on his caste and spat on his person. So also, appellant no.2 also abused on his caste and the said incident occurred at an open plot abutting the public road within the public view. The incident of abuse on caste to the respondent

no.3 was witnessed by the bypassers, Umesh Waghmare and (Buddhist Monk) Bhante Muditanand who intervened and separated them, hence, the appellants are not entitled for anticipatory bail under Sec. 18 of the Act, hence, prayed dismissal of the appeal.

15. Upon hearing both the sides, the only issue arises for my consideration is that, in the facts and circumstances of the present case, whether the provisions of Section 18 of the Scheduled Castes and Scheduled Tribes, Act, 1989 creates a bar Section 438, Cr.P.C. to enlarge the appellants/accused on anticipatory bail?

16. After going through the contents of the FIR/oral report, it *prima facie* show there being civil dispute going on between the parties for Plot No. 114, City Survey No. 813, purchased by respondent no.3/informant under the sale deed dated 08.07.2025. The area of the entire plot appears to be of 19 Sq.fts. towards east-west, 56 Sq.fts. towards South-North, total 50.40 Sq.fts. It is also a matter of record that, the present appellant no.1/accused- Shaikh Anis Shaikh Ibrahim had filed a Special Civil Suit No.25 of 2005 before the learned Civil Judge Senior Division, Parbhani seeking a decree of perpetual injunction against the defendants therein. The

present respondent no.3/informant was not the party to the said suit. On 03.09.2011, the learned Civil Judge Senior Division, Parbhani, passed the judgment and decree in Special Civil Suit No. 25 of 2005 and dismissed the suit of the present plaintiff/appellant no.1 -accused. Being dissatisfied with the said judgment and decree the appellant/accused no.1 filed Regular Civil Appeal No. 124 of 2022 before the learned District Judge, Parbhani.

17. It is also not in dispute that on 12.12.2018, the learned District Judge, Parbhani passed the judgment and order in RCA 124 of 2022 and set aside the judgment and decree passed by the learned Civil Judge Senior Division, Parbhani on 03.09.2011 in Special Civil Suit No.25 of 2005 and perpetually restrained the defendants therein from obstructing the possession of the plaintiff/present appellant no.1 over the plot ad-measuring 20 x 15 and 10 x 15 Sq.fts., known as 'Asha Hotel' and 'Asha Raswanti Gruh' standing on the said plot. Therefore, it *prima facie* appears that, the learned District Judge restrained the defendants/respondents in Regular Civil Appeal No. 124 of 2012 to the extent of said area. However, no injunction is operating against the original owner of plot i.e. Mr. Gautam Pandurangrao Bhalerao to the extent of other area. The respondent

no.3/informant contended that, he purchased the said plot on 08.07.2025 under sale-deed and subsequently he entered into an agreement to sale of said plot with Ahesan Khan s/o Abdul Rajjak and Nagesh Gangadhar Dhembre but on the day of incident the accused no.1-Shaikh Anis and no.2 Asef Patel questioned the respondent no.3 as to why he entered into an agreement to sale of said plot in favour of Ahesan Khan and told him that as they were intending to purchase the said plot. So also, on that count the appellant-accused abused on caste and assaulted the respondent no.3. The appellant no.1 also spitted on the person of respondent no.3. Some bypassers, Umesh Waghmare and (Buddhist Monk) Bhante Muditanand witnessed the said incident and they intervened and separated the accused and respondent no. 3.

18. Needless to say that, the present respondent no. 3/informant stated in the FIR that he purchased the plot ad-measuring 50 x 40 Sq.fts., from the legal representatives of the original plot owner Mr.Pandurang Bhalerao under the sale deed dated 08.07.2025 and he is in possession of the entire plot, except 450 Sq.fts., as per the order passed by the learned District Judge in Regular Civil Appeal No.124 of 2012. However, on 21.11.2025 at

about 11.30 p.m., when he alongwith one Ahesan Khan, were cleaning the said plot the alleged incident of abusement on the caste and spitting on the person of respondent no. 3/informant occurred within the public view. Therefore, the intention of the accused can be gathered for insulting, intimidating, humiliating the respondent no. 3/informant as per the provisions of Section 3 of the Atrocities Act. The appellants have not come with the case that they are not knowing that the respondent is a member of scheduled caste community.

19. Indeed, previously on 15.09.2011 a Crime No. 173 of 2011 was registered with Nanalpeth Police Station, Parbhani against the present appellant no.1 and another accused for the offences U/s 506 r/w Sec. 34 of IPC and 3(1)(x), 3(1) (v), 3(1)(iv) of S.C. S.T. (Prevention of Atrocities) Act allegedly abusing on caste to one Shri Gautam Bhalerao. On 30.01.2024, the Special Court passed the judgment and order in Spl. Case No. 10 of 2015 and acquitted the present appellant no.1/accused and others in Crime No. 173 of 2011. Therefore, it appears that, the appellant no.1 is a habitual offender committing crimes under the atrocities act.

20. In ***Kiran Vs. Rajkumar*** (cited supra), the Hon'ble Supreme

Court considered the cases of *Hitesh Varma – AIR 2020 SC 5504*, *Shajan Skaria Vs. State of Kerala (2024 SCC OnLine SC 2249)*, *Swaran Singh and Ors. Vs. State through Standing Counsel and Ors.; (2008) 8 SC 435* and *Prathvi Raj Chauhan Vs. Union of India and Ors; (2020) 4 SCC 727* and held that, if the incident of abusment on caste to the member of SC-ST community took place outside the house of the appellants, which could be viewed by anybody, it was indeed the place within the public view.

21. In the case in hand, the learned Additional Sessions Judge-2/the Special Court passed the impugned order considering the law laid down in various case laws cited therein and held that as per the contents of the FIR the accused abused the informant/respondent no.3 in a public place and within the public view on his caste by saying that “ढेडगे ए ऐसा क्यु किया, ढेडगे तुझे झुठे केस मे बहोत बुरा फसा दुंगा, तुम बाजु हटो हम यहा ढेडगेको देख लेते”.

22. Therefore, it *prima facie* shows that the the appellant abused the respondent no.3 in such a castiest language and spitted on his person with an intention to humiliate him in the public view, which was witnessed by the bypassers, Shri Umesh Waghmare and

(Buddhist Monk) Bhante Muditanand. Therefore, to my view as per the provisions of Section 18 of the Act, the bar is created under Section 438 of the Cr.P.C. to enlarge the appellants/accused on anticipatory bail. Accordingly, I answered the above issue.

23. Needless to say that, merely a civil dispute going on between the informant/respondent no.3 and the accused no.1, it does not grant authority and licence to the appellants accused to abuse on caste to the respondent no.3/informant and spit on his person. Therefore, I do not find that the appellants/accused have made out substantial grounds to enlarge them on anticipatory bail.

24. In view of above discussion, I am not inclined to allow this appeal and proceed to pass the following order :

ORDER

(i) The Appeal is dismissed.

(ii) The earlier interim relief granted on 10.12.2025 is hereby vacated.

(iii) The appellants/accused shall surrender before the concerned Investigating Officer, within a period of two weeks.

(Y.G. KHOBRAGADE, J.)

mahajansb/