



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

937 CRIMINAL APPEAL NO. 972 OF 2025

**CHAND OSMAN SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Appellant : Mr. Prashant P. Giri h/f. Dound Susmita V.
APP for Respondents/State : Mr. K.S. Patil
Advocate for Resp. No.2 : Mr. Y.B. Bolkar
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**CORAM : Y.G. KHOBRADE, J.
DATE : 10.02.2026**

PC.:-

1. Heard Mr. Prashant Giri h/f. Ms. Dound, the learned counsel appearing for the appellant, Mr. Patil the learned APP for the respondent/state and Mr. Bolkar the learned counsel appearing for the respondent no.2/informant.

2. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. It is a matter of record that on 27.11.2025, the respondent no.2/informant lodged a report with Shirur Police Station alleging that, on 26.11.2025 at about 8.00 pm., when she was standing in front of her house at that time the appellant/accused-Chand Osman Shaikh and one Firoz Syed visited there. Both the accused are having

knowledge that she belongs to ST community. Thereafter, Firoz asked her as to why she has filed a case against him at Pune. Thereafter, the present appellant/accused-Chand Osman Shaikh and Firoz abused her on her caste and threatened that they would not permit her to stay in the village. So also, they would not permit her brothers to stay in the village and assaulted her with fist blows. Further, if she does not withdraw the said case in that event they would eliminate her. The said incident was witnessed by Salim Gulab Pathan, Vitthal Prabhakar Bade and Ganesh Sarjerao Shinde who intervened and pacified them. On the basis of said report, Crime No.323 of 2025 registered against the present appellant and another accused for the offence punishable under Section 115(2), 3(5), 351(2), 352 of the Bharatiya Nyaya Sanhita 2023, as well as under Sections 3 (1)(r), 3 (1)(s), and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Shirur Police Station, Dist. Beed.

3. The learned counsel appearing for the appellant canvassed that as per the contents of the FIR, the present appellant/accused and another accused allegedly abused the informant in chorus and that no such incident has occurred. Therefore, the appellant has made out a *prima facie* case and allegations about abuse in the caste allegedly made in chorus without attributing specific role of particular accused.

4. In support of these submissions, the learned counsel appearing for the appellant placed reliance on the case of **Vijaymala w/o Tanaji Dolare & Ors. Vs. The State of Maharashtra & Anr.; AIR Bom.C.R. (Cri.) 85**, wherein, this Court observed as under:

“6. The learned Advocate placed reliance on the decision in Shashikant Ramhari Tambe and Ors. Vs. State of Maharashtra, (2008) AllMR(Cri) 2132, wherein it has been observed, after relying on the decision in Mukesh Kumar Saini Vs. State (Delhi Administration), (2002) All MR(Cri) 41, wherein it is observed that, there must be specific accusations against each of the accused and Section 34 of IPC cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. In that case also, on the basis of those observations, when allegations were that all the accused had made abuses and there was no specific accusation against each of the accused, anticipatory bail was granted when the offence was under the Atrocities Act. Same decision in the case of Shashikant Tambe (supra) was considered by this Court in Sugriv Prakash Garde and Ors. Vs. The State of Maharashtra and Anr. (Criminal Application No. 2848 of 2016 decided on 9.6.2016). In that case also, the offence was under the Atrocities Act.”

5. Per contra, the learned APP and the learned counsel appearing for the respondent no.2 supported the findings of the learned trial Court. The learned APP has filed affidavit in reply and strongly resisted the appeal. It has been canvassed that as per the contents of the FIR, the incident has occurred on 26.11.2025 at about 8.00 pm in front of house of the informant. The informant specifically attributed roles played by the present appellant/accused and another accused. It is contended that as per the FIR another accused Firoz Syed asked as to why she lodged a complaint/case against him at Pune.

Thereafter, both the accused persons abused the informant on her caste and issued threats that they would not permit the informant and her brothers to stay in the village. Therefore, the incident has occurred within the public view. Therefore, as per the provisions of Section 18 of the SC-ST Act bar is created for enlarging the appellant/accused under Section 438 of the Cr.P.C. Hence, prayed for dismissal of the appeal.

6. In the case of **Karuppudayar V/s. State represented by the Deputy Superintendent of Police and Ors.**; AIR 2025 SC 705, the Hon'ble Supreme Court observed in para 10 as under:

10. The term “any place within public view” initially came up for consideration before this Court in the case of Swaran Singh and others v. State through Standing Counsel and another. This Court in the case of Hitesh Verma v. State of Uttarakhand and another 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 :

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)”

7. In the case of **Kiran V/s. Rajkumar J. Jain; AIR 2025 SC 4083**, wherein it has been held that Section 18 expressly excludes the applicability of Section 438 of the Cr.P.C., if the incident has occurred within public view.

In other words, in relation to any case involving arrest of a person who is facing the accusation about committing offence under this Act, protection of Section 438 Cr.PC. would not be available. The legislature has taken away the benefit of anticipatory bail in respect of the arrest for the offences alleged under the SC/ST Act. The bar in Section 18 of the SC/ST Act would operate.

8. In the case in hand, as per the contents of the FIR the incident of assault and slur on caste to the respondent no.2/informant occurred in front of her house within the public view and three witnesses observed said incident as they were present at the spot of the incident. Therefore, as per the ratio laid down in the case of **Kiran** cited (supra), if the incident has occurred within the public view, as per Section 18 of the SC-ST Act bar is created u/s 438 of Cri. P. C. to enlarge the appellant/accused on anticipatory bail.

9. On 15.12.2025, the learned Special Court passed the impugned order and refused to enlarge the appellant/accused on anticipatory bail considering the occurrence of incident in the public place. Therefore, to my mind, offence punishable under Section 3 (1)(r), 3 (1)(s), and 3(2)(va) of the SC-ST Act appears to have been made out as against the appellant accused and bar is created under Section 18 of the SC-ST to enlarge the appellant/accused on anticipatory bail. Therefore, I do not find it appropriate

to disturb the findings recorded by the trial Court. So also, the appellant/accused has failed to make out a *prima facie* case to enlarge him on anticipatory bail.

10. Accordingly, the appel is dismissed. Interim relief hereby stands vacated.

[Y.G. KHOBRADE, J.]