



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

40 CRIMINAL APPEAL NO. 112 OF 2026

SHIVAJI BANKATI YADAV

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

....

Mr. S. J. Salunke, Advocate for the Appellant

Mr. D. B. Bhang, APP for Respondent Nos. 1 and 2

Mr. R. D. Thorat, Advocate (Appointed through Legal Aid) for
Respondent No.3

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CORAM : Y. G. KHOBRAGADE, J.

DATE : April 06, 2026

PER COURT :-

1. Heard the learned counsel appearing for the appellant, the learned APP for respondent Nos. 1 and 2, and the learned counsel appearing for respondent No.3 / informant.

2. By the present appeal under Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellant / accused takes exception to the order dated 05.02.2026, passed below Exh.1 in Criminal Bail Application No.35 of 2026 by the learned Additional Sessions Judge / Special

Judge, Kaij, District Beed, thereby declined to release the appellant/accused on anticipatory bail in connection with Crime No.3 of 2026, registered with Dharur Police Station, District Beed on 08.01.2026, for the offence punishable under Sections 189(2), 189(4), 191(2), 191(3), 190, 118(2), 118(1), 115(2), 352 and 351(2) of B.N.S., under Sections 3(1)(r), 3(1)(s), 2(2)(va), 3(2) and 3(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. 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 08.01.2026, the respondent No.3 / informant lodged an oral report with Dharur Police Station, alleging that on 07.01.2026 at about 4.00 p.m., while he was on the way to his field to collect the firewood and reached near the gate of "*Shaheed Jawan Natha Chhatragun Yadav*", at that time, the present appellant / accused Shivaji Bankati Yadav approached him and questioned as to why his father lodged the complaint of atrocity against him and why he has not been withdrawn the same. It is further alleged that the appellant/accused abused the informant in filthy language. At the same time, the other accused Datta Bhimrao Yadav, Bankati Bhimrao

Yadav, Rama Datta Yadav, Subhash Prakash Yadav, Abhishek Shivaji Yadav, Tushar Shivaji Yadav and Prakash Arjun Yadav also came to the spot and abused him on his caste and said that as to why the atrocities complaint is not getting to withdraw. At that time, when the complainant told that they fractured the hand of his father and therefore, the complaint will not be withdrawn. Thereafter, the present appellant / accused Shivaji Bankati Yadav along with his associate Subhash Prakash Yadav, allegedly assaulted him with the sickle on his head and again abused on his caste. On the basis of said oral report Crime No.3 of 2026 came to be registered against the present appellant and his associates.

4. Section 189 of B.N.S. provides for an unlawful assembly consisting of five or more persons. Section 189(4) provides that whoever, being a member of unlawful assembly, armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both has been provided. Section 191(2) provides whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or

with both. Section 118(2) provides punishment not less than one year but which may extend to ten years, and shall also be liable to fine. Section 352 provides that whoever intentionally insults in any manner, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

5. Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, creates a bar under Section 438 of Cr.P.C. (Section 482 of B.N.S.S.) if the offence is made out under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

6. In the case of ***Kiran Vs. Rajkumar Jivraj Jain and Ors, AIR 2025 SC 4083***, wherein, in paragraph No.6, the Hon'ble Supreme Court has observed thus:-

“6. In light of the 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.PC, 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.”

7. In the case in hand, on perusal of the F.I.R., it prima facie appears that, when the informant was on the way to his field to get firewood and reached near the gate of “*Shaheed Jawan Natha Chhatragun Yadav*”, the present appellant / accused visited him and issued threat as to why he is not withdrawing the complaint of

atrocities lodged against his father. The appellant / accused also abused on casteist slur to the respondent No.3 / informant at the public place in public view and assaulted to the informant. Therefore, considering the contents of F.I.R. as well as the injury certificate placed on record, the incident which occurred within the public place and public view, therefore as per the law laid down in the case of **Kiran** cited (*supra*), I do not find that the appellant / accused has made out *prima facie* case to enlarge him on anticipatory bail and no bar is created under Section 18 to enlarge the appellant / accused on bail.

8. In view of above, the present appeal is dismissed.

9. The fees of the appointed counsel Mr. R. D. Thorat, shall be quantified as per rules and be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[Y. G. KHOBRADE, J.]

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