



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 209 OF 2026

1. Adam Khan s/o Akaram Khan Pathan
 2. Swapnil s/o Ravindra Chavhan,
 3. Abhijit s/o Vilas Atole,
 4. Nilesh s/o Sahebrao Sonawane
- ...Appellants

Versus

The State of Maharashtra and Others

...Respondents

Mr. R. N. Dhorde, Senior Counsel i/b Mr. Jadhav Kiran D., Mr. Akshay D. Ostwal, Mr. Vikaram L. Bhange and MR. Kartavya S. Ostwal, Advocate for the Appellants.

Mr. V. S. Badakh, APP for Respondent – State.

Mr. Raghu Bhimrao Jadhav, Advocate for Respondent No.3.

CORAM : ABHAY J. MANTRI, J.

DATE : APRIL 18, 2026

PER COURT :

1. The Appellants – Accused have filed this Appeal for the grant of pre-arrest bail in connection with Crime No.0040 of 2026, dated 28th February 2026, registered with Daulatabad Police Station, Dist. Chhatrapati Sambhajnagar for the offences punishable under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “*SC and ST Act*”) and Sections 115(2), 351(2) and 352 of the Bharatiya Nyay Sanhita, 2023 (for short “*BNS*”).

2. Heard, Mr. Dhorde, learned Senior Counsel appearing for the Appellants, Mr. Badakh, learned APP for Respondent Nos. 1 and 2 and Mr.

Jadhav, learned counsel appearing for Respondent No.3 – Informant and perused the Appeal memo and a copy of the charge-sheet.

3. On 28th February 2026, the Informant lodged a report regarding the occurrence of an incident between 09:00 a.m. on 23rd February 2026 and 01:30 p.m. on 24th February 2026, alleging that the Appellants had assaulted, harassed, and abused his son on account of non-payment of mess fees. They were not serving breakfast and stopped him from taking meals. Therefore, the Informant, along with others, went to the academy on 24.02.2026, and a verbal altercation occurred between them while they were leaving Accused No. 4 – Nilesh's cabin. It is further alleged that Accused No.4 followed them all the way to the ground and abused them by referring to their caste; therefore, the offence came to be registered against the Appellants.

4. Pursuant to registration of the offence, the Appellants moved an Application under Section 482 of the Bharatiya Nagrik Suraksha Sanhita, 2023, (for short, '*B.N.S.S. Act*') for the grant of Bail before the learned Special Judge (Under SC & ST Act), Aurangabad. The Special Judge, vide his order dated 18th March 2026, rejected the Application. Being aggrieved by the said order, the Appellants have preferred this Appeal for the grant of Pre-arrest Bail.

5. Mr. Dhorde, learned Senior Counsel for the Appellants, during the course of arguments, vehemently contended that there are no specific

averments against the Appellants that they have abused the Informant and others by referring to their caste. There is a discrepancy between the statements of the Informant and his son and wife, who were accompanying him. The son, namely Om, and his wife, Pushpa, who are the witnesses, have not stated that Accused No. 4 abused them with a caste slur, and therefore, the discrepancy appears in the statements. He further pointed out the admission form filled by the student, i.e., Om (page No. 44), and submitted that it contains no column for caste; therefore, the Appellants were unaware of Om's or the Informant's caste.

6. He further argued that the offences under the BNSS Act are bailable. The learned Special Judge has rejected the Application only on the ground that the crime was registered against the Appellants under the SC and ST Act, and there is a bar under Section 18 of the SC and ST Act. He placed reliance on the law laid down by the Hon'ble Supreme Court in *Keshaw Mahto @ Keshaw Kumar Mahto Vs. State of Bihar and Another*¹, and more specifically, the findings recorded in paragraph Nos. 12 to 17. As such, he urged the enlargement of the Appellants on Bail.

7. Per contra, learned APP and the learned counsel for Respondent No. 3 opposed the Appeal and Bail on the ground that the Informant in the complaint has specifically stated that Accused No. 4 abused him with a caste

¹ 2026 DGLS (SC) 89

slur and his statement is supported by the statement of witness Namrata, who was accompanying him, and therefore, prima facie material appears against them under the provisions of the SC and ST Act. Therefore, they submit that the order passed by the learned Special Judge is just and proper and that no interference is warranted, and urge that the Appeal be dismissed.

8. On perusal of the FIR and the statements of the witnesses, prima facie it appears that Om, son of the Informant, was studying in the said academy and in his statement, he nowhere stated that the Accused persons abused him with a caste slur or assaulted him on account that he belongs to the SC/ST category. Still, his statement only indicates that, on account of non-payment of mess fees, the Appellants were insisting that he pay the same. His statement prima facie does not disclose the commission of an offence under the provisions of the SC and ST Act. Similarly, on perusal of the statement of Pushpa, wife of the Informant, it does not appear that the Appellants abused them with a caste slur or assaulted their son on account that he belongs to the SC/ST category, but only stated that on account of non-payment of fees, the Appellants used to harass, abuse, and beat Om.

9. It is pertinent to note that Pushpa and Om were accompanying the Informant, Nitin; however, they have not stated anything that the Appellants abused them with a caste slur, and their statements are silent.

10. Likewise, if the statements of the Informant and the witness Namrata are perused, who is alleged to have accompanied the Informant, though they have stated that the Appellants abused them with a caste slur, a discrepancy appears in their statements in that regard. Thus, prima facie, it appears that the statements of Om and Pushpa do not corroborate the Informant's contentions, and a discrepancy exists between the statements of the Informant and Namrata regarding the alleged abuse with a caste slur by Appellant No. 4.

11. Even considering the statement of witness Om that Accused No. 2 – Swapnil assaulted him with a PVC pipe on his right hand and leg, the injury certificate does not reflect any injury on his right hand or leg, but the injuries in the medical papers indicate trauma on the back and nose. Moreover, in the FIR, the Informant has not stated that Accused No. 2 – Swapnil assaulted Om by means of a PVC pipe, and a discrepancy appears regarding the alleged assault by a PVC pipe by Accused No. 2 – Swapnil.

12. Apart from that, there are no specific allegations against Appellant Nos. 1 to 3 that they have abused the Informant or Om with a caste slur. So, the provisions of the SC & ST Act do not apply against them.

13. While considering the provisions under the SC and ST Act, the Hon'ble Apex Court in *Keshaw Mahto (supra)* in paragraphs Nos. 12 to 17 of the judgment, observed as under:

- “12. Section 3(1)(r) is attracted where the reason for the intentional insult or intimidation by the accused is that the person who is subjected to it is a member of a Scheduled Caste or a Scheduled Tribe. In other words, the offence under Section 3(1)(r) cannot stand merely on the fact that the informant/complainant is a member of a Scheduled Caste or a Scheduled Tribe, **unless the insult or intimidation is with the intention to humiliate such a member of the community.**
13. To put it briefly - first, the fact that the complainant belonged to a Scheduled Caste or a Scheduled Tribe would not be enough. **Secondly, any insult or intimidation towards the complainant must be on account of such person being a member of a Scheduled Caste or a Scheduled Tribe.**
14. With a view to dispel any doubt and lend clarity, we deem it appropriate to mention that even mere knowledge of the fact that the complainant is a member of a Scheduled Caste or a Scheduled Tribe is not sufficient to attract Section 3(1)(r).
15. Further, for an offence to be made out under Section 3(1)(s), merely abusing a member of a Scheduled Caste or a Scheduled Tribe would not be enough. **At the same time, saying the caste name would also not constitute an offence.**
16. In other words, to constitute an offence under Section 3(1)(s), it would be necessary that the accused abuses a member of a Scheduled Caste or a Scheduled Tribe **“by the caste name” in any place within public view. Thus, the allegations must reveal that abuses were laced with a caste name, or the caste name had been hurled as an abuse.**
17. What appears from the aforesaid is that the element of humiliation is present in Section 3(1)(s) as well. It has to be gathered from the intentional insult towards the caste and the content. The content under Section 3(1)(s) is the abuses hurled at a person belonging to a Scheduled Caste or a Scheduled Tribe. **However, the intent with which the abuses were hurled must be found to be denigrating towards the caste, resulting into a feeling of caste-based humiliation.”**

14. In view of the aforesaid observations of the Hon’ble Supreme Court, it is revealed that in the case at hand, prima facie, the statements of the witnesses do not show that there was an intentional insult or

intimidation with the intention to humiliate such a member of the community towards caste made by the accused persons. Also, to constitute an offence under Section 3(1)(s), it would be necessary that the accused abuses a member of the SC or ST by the caste name in any place within public view.

15. In the case at hand, prima facie, nothing was brought on record to indicate that the alleged acts of the Appellants were motivated by the reason that the Informant or his son are members of a Scheduled Caste or a Scheduled Tribe. No specific allegations appear in the statements of Om and Pushpa about insult or intimidation by the Appellants on the basis of caste.

16. Thus, it is apparent that the allegations levelled in the FIR, even if taken at their face value and accepted in their entirety, do not prima facie constitute an offence under the provisions of the SC and ST Act. Therefore, the question of bar under Section 18 of the SC and ST Act does not arise at this stage.

17. It also appears that the offences registered under the B. N. S. Act are bailable ones. The investigation is on the verge of completion, and, having discussed the above discrepancies regarding the use of any PVC pipe as a weapon, in my view, custodial interrogation of the Appellants is not required in the present case.

18. In the light of the above discussion, the Appellants are entitled to be released on pre-arrest bail.

19. As a result, **the Appeal is allowed in terms of the prayer clause B.**

(A) In the event of the arrest of the Appellants, they be released on bail in connection with Crime No.0040 of 2026 registered with Daulatabad Police Station, Dist. Chhatrapati Sambhajnagar for the offences punishable under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 115(2), 351(2) and 352 of the Bharatiya Nyay Sanhita, 2023, on furnishing PB. and S. B. of ₹ 50,000/- each on the following conditions :-

- (i) The Appellants shall remain present before the Investigating Officer on 23rd April 2026, at 11:00 a.m. and thereafter as and when called by the Investigating Officer and shall cooperate with the investigation till the filing of the charge sheet.
- (ii) The Appellants shall not tamper with the prosecution evidence in any manner till the conclusion of the trial.
- (iii) The Appellants shall not leave India without prior permission of the Court till the conclusion of the Trial.

20. The Appeal is disposed of.

(ABHAY J. MANTRI, J.)