



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 294 OF 2026

Appasaheb Vinayakrao Hiwale

...Appellant

Versus

The State of Maharashtra and Others

...Respondents

Mr. Sudarshan J. Salunke a/w Mr. Digvijay S. Patil, Advocate for the Appellant.

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

Mr. Chandrakant D. Biradar, Advocate for Respondent No.3.

CORAM: ABHAY J. MANTRI, J.

DATE : MAY 08, 2026

PER COURT :

1. The Appellant, being dissatisfied with the order dated 13th April 2026 passed by the learned Special Judge (SC & ST Act) Aurangabad in Criminal Bail Application No. 658 of 2026, thereby rejecting the bail application in connection with Crime No.0079 of 2026 dated 01st April 2026, registered with Kannad (Rural) Police Station, Dist. Chhatrapati Sambhajnagar, for the offences punishable under Sections 115(2), 352, 351(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short “**BNS**”) and under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “**SC & ST Act**”), has preferred this Appeal for grant of pre-arrest bail.

2. Heard, Mr. Salunke, along with Mr. Digvijay Patil, learned counsel appearing for the Appellant, Mr. Biradar, learned counsel appearing for Respondent No. 3 and Mr. Badakh, learned APP for the Respondent – State.

3. Perused the record, case papers and Affidavit-in-Reply of Respondent No. 3 as well as the written notes of arguments along with citations submitted by Respondent No.3.

4. On 01st April 2026, at about 02:30 p.m., the incident occurred at Gut No. 357. Accordingly, the informant lodged a report about the incident, alleging that when she and her daughter arrived at her field, they saw 20 to 25 persons working there, including some who were operating a Rotavator. When she asked why they were ploughing in her field, the appellant abused her with a caste slur, gave her kicks and fist blows, pulled her hair, and threatened to kill her. Therefore, the offence was registered.

5. Pursuant to registration of the FIR, the Appellant moved an Application for the grant of pre-arrest bail before the learned Special Court, which, by order dated 13th April 2026, rejected the Application of the Appellant and granted bail to two co-accused persons, as there were specific allegations made against the Appellant that he abused the informant with a caste slur. Aggrieved by the said order, the Appellant has preferred this Appeal.

6. Learned counsel for the Appellant vehemently contended that the Appellant was not present at the spot; however, he has been wrongly implicated in the present crime. He was not present, nor did he abuse or assault the informant. Therefore, he urged that the Appellant be released on bail.

7. On the other hand, learned counsel appearing for Respondent No. 3 and the learned APP vehemently opposed the bail. They resisted the plea of Alibi taken by the Appellant as the same is not applicable at this stage. On the contrary, the Appellant violated the order passed by the Sessions court as well as this Court. The learned counsel for the Respondent No. 3 has placed reliance on the observations made in the *judgment Kiran V/s Rajkumar Jivraj Jain* and submitted that in view of the parameters laid down therein, it creates a bar for entertaining an application under section 18 of the SC & ST Act. He further filed detailed written Notes of Arguments on behalf of Respondent No. 3, along with 12 judgments and photographs (page Nos. 106 to 109) and a pen drive recorded by the Victim in a sealed envelope at page No. 110. The list of 11 judgments is as follows:-

- i) *Kiran Vs. Rajkumar Jivraj Jain and Another, reported in 2025 SCC OnLine SC 1886. (para. Nos.6, 6.1 and 6.2).*
- ii) *Karuppudayar Vs. State Rep. By the Deputy Superintendent of Police, Lalgudi Trichy and Others, reported in 2025 SCC OnLine SC 215 (para. No.9).*

- iii) *Pradnya Pradeep Kenkare and Ors. Vs. State of Maharashtra, reported in 2005(3) Mh. L.J. 368 (para.No.8).*
- iv) *Vilas Pandurang Pawar and Another Vs. State of Maharashtra and Others, reported in 2012(4) Mh.L.J. (Cri.) 707 (para.Nos.8 and 9).*
- v) *Balu B. Galande Vs. State of Maharashtra and Others (Criminal Application No.802 of 2006) (para. No.18).*
- vi) *Salim Abdul Shaikh Vs. The State of Maharashtra (Criminal Appeal No.1030 of 2018) (para.No.9).*
- vii) *Kiran s/o Madhukar Ingle Vs. The State of Maharashtra and Another, reported in 2019 ALL MR (Cri.) 2825 (para. No.19).*
- viii) *Prathvi Raj Chavan Vs. Union of India, reported in AIR 2020 SC 1036 (para. Nos.10 and 11.)*
- ix) *Vijaymala Tanaji Dolare Vs. State of Maharashtra, reported in 2020 All M.R. (Cri.) 1835 (para. No.11),*
- x) *Hitesh Verma Vs. State of Uttarakhand and Another, reported in Cri.L.J. SC 1 (para. No.15)*
- xi) *Kumar Ali s/o Yunus Ali Sayyed Vs. State of Maharashtra and Another (Criminal Appeal No.159 of 2024) (para. No.9)*
- xii) *Copy of Caste Certificate of the Victim.*
- xiii) *Photographs (page Nos.106 to 109).*
- xiv) *Pen drive in a envelope (page No.110).*

8. Lastly, they submitted that in view of the law laid down in the above judgments and the F.I.R., it is not permissible for the Court to travel into the evidential realm or to consider other material in support of the plea of alibi to conduct a mini-trial while deciding the pre-arrest bail Application. Hence, they urged that the Bail Application be rejected.

9. In the FIR, the informant categorically stated that, at the time of the incident, independent witnesses Eknath Dolas and Ramesh Jadhav witnessed the incident. However, the witness Eknath categorically stated that, in his presence, no quarrel took place between the parties in Gut No. 357. His statement prima facie appears inconsistent with the statement of Respondent No. 3 – victim/informant.

10. The recording of the statement of another alleged independent witness, Ramesh Jadhav, learned APP submitted that the Investigating Officer had not recorded the statement of Ramesh Jadhav till this date; therefore, the said statement is not available. Incident occurred on 01.04.2026; however, to date, his statement has not been recorded. Another witness, Devpriya, is the informant's daughter, i.e. her family member. Thus, prima facie, no material has been produced by the prosecution to demonstrate that the incident occurred within public view or in a public place as per the law laid down by the Hon'ble Supreme Court in the above-cited judgments, which is a mandatory condition to apply the ingredients of Section 3(1)(r)

and (s) of the SC & ST Act.

11. Moreover, the prosecution has failed to produce any injury certificate on record to show that Respondent No. 3 sustained any injury. As per allegations in the F.I.R., she was assaulted with kicks and fist blows, and her hair was pulled; therefore, certainly she would have sustained injuries, but nothing has been produced on record to evidence that she sustained any injury. These facts also appear inconsistent with her alleged story.

12. Apart from this, along with the written notes of arguments, learned counsel for Respondent No. 3 produced the video clip recorded by the informant before the Court and also produced photographs of the said clip on record. He, on instructions of the informant, showed the photographs at page No. 106 and stated that, in the said photographs, the middle person in a white shirt with goggles is the accused – Appasaheb, and that he was present on the spot. In response, learned counsel for the Appellant vehemently denied the said contention and submitted that the said person is the father of the Appellant – Appasaheb, and not Appasaheb himself. He is ready to file an Affidavit in that regard. He also produced attested photocopies of the PAN Card and Aadhaar Card of the Appellant/Accused Appasaheb before the Court. On his submissions, again, a query was put to the learned counsel for Respondent No. 3 regarding the said photograph, and he was asked to file an Affidavit if the person shown in the photograph is Appasaheb. Then, on the

instructions of Respondent No. 3, who is present in the Court, he submitted that the said person is the father of the Appellant, Appasaheb and not Appasaheb. In the video clip and the photographs produced on record, the presence of the Appellant Appasaheb at the spot is not visible. Still, at the time the report was lodged, Respondent No. 3 was under the misimpression that he was Appasaheb. Therefore, he submitted that the Appellant's name was mentioned in the complaint instead of Vinayakrao. The said submissions, prima facie, cast doubt on the Appellant's presence at the spot; therefore, the question of the Appellant's abuse or assault of the informant does not arise. On that ground also, the Appellant is entitled to bail.

13. Having considered the above facts, prima facie, the prosecution has failed to demonstrate that the incident occurred in any place within public view or that the Appellant was present on the spot; therefore, the question of application of Section 18 of the SC & ST Act does not arise. Therefore, in my view, the judgments relied upon by learned counsel for Respondent No. 3 are hardly of any assistance to him in support of his contention. Therefore, I do not find merit in the contention of learned counsel for Respondent No. 3, as well as in the written notes of argument, to the evidence that the Appellant was present and that he abused the informant in any place within public view.

14. In the light of the above discussion, I am of the view that the custodial interrogation of the Appellant is not required in the present crime.

Therefore, the Appellant is entitled to pre-arrest bail. However, to dispel the apprehension of the prosecution, stringent conditions can be imposed on him while releasing him on bail.

15. As a result, **the Appeal is allowed in terms of prayer clauses (b) and (c).**

16. In the event of the arrest of the Appellant, he shall be released on bail in connection with Crime No.0079 of 2026, registered with Kannad (Rural) Police Station, Dist. Chhatrapati Sambhajinagar, for the offences punishable under Sections 115(2), 352, 351(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, **on furnishing P.B. and S.B. of ₹ 50,000/- with one or two solvent sureties**, on the following conditions:

- (i) The Appellant shall attend Kannad (Rural) Police Station on 18th May 2026 between 11:00 a.m. and 01:00 p.m. and thereafter as and when called by the Investigating Officer till filing of the charge-sheet.
- (ii) The Appellant shall not tamper with the prosecution evidence in any manner till the conclusion of the Trial.
- (iii) The Appellant shall not leave India without prior permission of the Court till the conclusion of the Trial.

(ABHAY J. MANTRI, J.)