

ORDER BELOW EXH -1 IN MISC CRI. APPLN NO.25/2022**Aviraj s/o Tatyaram Sondage and ors****Versus****State of Maharashtra.**

MHBI010000692022



1) This is the application for anticipatory bail filed under section 438 of the Cr.P.C. by applicant/accused 1] **Aviraj s/o Tatyaram Sondage and 2] Shrikrishna alias Krishna s/o Shrinivas Andure,** in connection with Crime No.170/2021 registered in Patoda Police Station for the offence punishable u/sec.302,307,324,147,148,149,435,504,506,376 ,376(d) of the Indian Penal Code (in short “ I.P.C.”) and under section 3(2) (III),3(2(va), 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, (in short “ Atrocities Act”) and under section 4 of the Protection of Children From Sexual Offences Act (in short “ POCSO Act”).

2) Facts giving rise to the present application are as follows:

The complainant resident of Parner, Tq. Patoda District Beed, belongs to Pardhi community on 26-09-2021 gave statement before the concern Police while admitted in Civil Hospital Beed to the effect that she is residing with her family members at the above mentioned address. Before five days ago her son was quarreled with the persons from Aute family. It is further alleged that, on 25-09-2021 at about 8.00 p.m. when

complainant slept with her family members at about 12.00 to 12.30 a.m. villagers namely Baban Aute, Balu Aute, Kachru Aute, his three sons, Ashok Dahiwal, Vishnu Aute, Vishal Aute, Yuvraj Aute and other 10 to 12 persons came in front of the complainant's house and said that, the son of the complainant namely Arun assaulted with knife to their person and the complainant's family members are thieves, grazing goats in their field, abused in filthy language and assaulted her, her husband and other family members. They also set fire their hut. On the basis of the said statement, Police of Patoda Police Station registered the Crime No.170/2021 for the above mentioned sections against the accused.

3) Thereafter, concerned I.O. has completed the investigation and filed charge sheet before this Court vide charge sheet No. 104/2021 and thereafter, case is registered as Spl.Case (POCSO) No. 141/2021. In the said charge sheet present applicants are shown as absconded accused No.13 and 17 respectively. Apprehending arrest in the hands of the Police they have filed present anticipatory bail application on the ground that, the applicants are falsely roped in the crime. They are innocent and they have not committed any offence. Applicant No.1 is taking education in B.A. III year at Patoda ,but since five to six months he has joined at Swarupa Career Academy at Phaltan District Satara, for preparing competitive examinations. Applicant No.1 is educated and having old aged parents at his house. He has no concern with the alleged incident. Neither he was present at the spot of alleged incident, nor he assaulted to the complainant or any other person.

Applicant No.2 is agriculturist by profession and also completed B.A. and his father Shrinivas Rangrao Andure is suffering from kidney disease, admitted in Shreedeeep Hospital at Ahmednagar. Thereafter, he was shifted at Pune for higher treatment. Applicant No.2 is the only son of his parents. There is nobody to look after his father. He has to arrange funds for the treatment of his father. He also have no concern with the alleged incident. Neither he was present on the spot of alleged incident nor he has assaulted the complainant or any other injured persons. Name of the applicants are not shown in the F.I.R. There was dispute in between the villagers of village Parner and complainant's family, the complainant intentionally in order to pressurize the villagers, arrayed innocent and reputed persons from the village in this serious offence by joining hands with the political rivalare. The applicants neither abused nor assaulted to the family members of the complainant and therefore, such ingredients of inserted sections are not attracted in the present case. Applicants are not involved in the case and therefore, question of recovery and their custody shall not arise. Other accused were arrested and released on bail. If bail is not granted educational career of applicant No.1 will be spoiled. If applicant No.2 is arrested there is nobody to look after his parents. There was delay in lodging the complaint. Provisions of Atrocities Act, does not applicable,as such there is no bar under section 18 of the Atrocities Act. Applicants are having permanent house and landed property in their village, therefore, there are no chances of absconding. The applicants will co-operate the Police in investigation and will not tamper the prosecution evidence.

Hence, prayed to release them on anticipatory bail.

4) Learned A. G. P. objected the application by filing say Exh-8 on contention that, there is strong prima-facie case against the applicant/accused showing their active participation in the above crime. During investigation on the statements of the witnesses sections 376,376(D) of the IPC and under section 3(1)(w)(i)(ii) of Atrocities Act and under section 4 of the POCSO Act came to be added. If applicants released on bail, they will pressurize the complainant and the prosecution witnesses. If the present applicants released on bail, they will tamper the prosecution evidence and repeat said offence. Offence is of very serious nature and anti-social one. Investigation of the crime is in progress. Custody of the present applicants is necessary for further investigation of the crime. Considering the gravity and seriousness of the offence, and prima-facie involvement of the applicant, prosecution humbly submit that the application under reply may kindly be rejected. Hence, prayed to reject the application.

In this case, notice was issued to the complainant who appeared and filed say at Exh 10 and thereby objected the application.

Perused the application and say filed by A.G..P. for the State and the complainant.

Heard learned counsel for the applicants/accused, learned A.G.P. for the State and learned counsel for the complainant.

5) From the F.I.R. it transpires that, on 26-09-2021 while informant who was admittedly belongs to Pardhi community

while admitted in Civil Hospital Beed, given statement that she is residing along with her family members at Parner Tq. Patoda District Beed. Prior to five days quarrel was taken place in between her son with Aute persons from the said village. On 25-09-2021 at about 8.00 p.m. the complainant along with her family members after taking dinner went for sleep. At 12.00 to 12.30 a.m. one Baban Aute, Balu Aute son of Baban Aute, three sons of Karchru Aute, Vindo Aute, Ashok Dahiware son of Laxman Dahiware, Vishnu Aute, Vishal Aute, Yuvraj Aute, and other 10 to 12 persons came in front of their house and told, her son had given blow of knife on the stomach of their person. They are grazing she-goats in their field. They are committing thefts and therefore, they do not want Pardhi people should stay in their village. After abusing started beating them by means of stick. The said accused given blow of stick at her both hands, back and leg. The said accused also given blow of stick at both legs, head, back and hands of her husband. They also given blow of stick at the head, right hand of her daughter-in-law. They also given blow of stick at the head of her grand-son. They also assaulted her sister by fist and kick blows and sticks. They also assaulted her niece at her left hand and back. They have also assaulted her grand daughter by means of stick at her head, both hands and leg. They also assaulted another grand daughter by means of fist and kick blows. They also assaulted another grand-daughter by fist and kick blows. They also set-fire shed of she-goats and hut and threatened to kill them. In the said incident her husband and her grand son also expired. On the basis of the said complaint, Police registered Crime No.170/2021 for the offences

302,307,324,147,148,149,435,504,506 of the IPC and also under section 3(2)(iii),3(2)(va) and 3(2)(v) of Atrocities Act.

6) During investigation it was revealed that, accused also committed rape on her daughter-in-law who was 23 years of age. During investigation it was revealed that, accused also committed rape on the daughter-in-law and grand daughter of the complainant and therefore, in this case Section 376,376(d) of IPC and under section 4 of the POCSO Act was added. If police papers are properly scrutinized, it appears that, police visited the spot and from the spot collected blood sample, three sticks, blood smeared clothes and ash. Accused Vinod Kachru Aute was arrested and as per information provided by him recovered one stick which was seized by the police by preparing seizure panchnama. Police also seized clothes of the deceased by preparing panchnama. Police also seized clothes of the victim who were raped by the accused by preparing panchnama. Police arrested Datta Sitaram Mahajan and on the basis of information given by him police recovered stick by preparing panchnama. Police conducted inquest panchnama and P.M. over dead body. Injured witnesses were examined through Medical Officer and their Medical Certificates are produced on record. Admittedly, in this case charge sheet is filed vide Spl. Case (POCSO) No.141/2021 in which the applicants are shown as absconding accused. In this case in all ten accused are arrested out of which accused No.1,2,3,5,6 ,7 and 8 are already released on regular bail.

7) In the present case, it was the specific contention of the learned counsel for the accused is that, there is no iota of

evidence against them. Police filed case under provisions of Prevention of Atrocities Act, but not disclosed caste of the accused. He submitted that, no prima-facie case is made out against the accused for the offence under section 3(2)(iii),3(2)(va),and 3(2)(v) of the Prevention of Atrocities Act and therefore, bar provided under section 18 of the Prevention of Atrocities Act, is not attracted in the present case. In support he relied upon the Judgment of Hon'ble Karnataka High Court in the case of **Shri. B.M. Erappa and others Vs. State of Karnataka .**

Then he submitted that, the complainant must disclose caste of the offender. However,in the present case, no caste of the offender is disclosed and therefore, provision of Prevention of Atrocities Act, is not applicable.

To buttress he relied upon the Judgment of Hon'ble Bombay High Court in the case of **Prakash s/o Gopalrao Pohare Vs. State of Maharashtra and anr, 2007(12) LJSOFT 43**, wherein it is held that:

“Though F.I.R. does not disclose the caste of the complainant but it does not disclose the caste of the offender. Contention that even if name of the complainant is seen,he does not belong to scheduled caste cannot be accepted. Surnames in the State of Maharashtra is very deceptive-Cannot be said that the surname can be a guide to find a caste of any particular person. It is necessary that the caste of the offender must also be disclosed in the complaint. F.I.R. registered under section 3(i) (x) of S.C.and S.T. (Prevention of Atrocities)Act, is quashed”.

Then he relied upon the Judgment of Hon'ble Bombay High Court in the case of **Mahadeo Pandurang Kadam & Ors Vs. State of Maharashtra 2007(3) LJSOFT (URC) 27** wherein it is held that:

“In the F.I.R. neither complainant has disclosed that he belongs to Scheduled Castes or Scheduled Tribes nor he has stated that any of the accused do not belong to Scheduled Castes or Scheduled Tribes- Also not stated that out of 5 accused persons, who had uttered the abusive words. Provisions of Atrocities Act may not be applicable. Also the requisite intent to involve Section 365 of IPC also absent. Though the incident had occurred on 02-12-2006, the F.I.R. is lodged on 21-12-2006. Anticipatory bail granted”.

8) Per contra, it was the contention of the learned counsel for the complainant is that, the offence is very serious one. Though the witnesses have not attributed overt act on the part of the applicants in their statements but witnesses specifically stated that 10 to 12 persons other than named accused were present. Evidence can be collected only after arrest of the accused. Offence is serious one and therefore, application be rejected and to buttress he relied upon the Judgment of Honble High Court **Tripura Agartala in the casge of Sri. Gagan Debbarma Vs.State of Tripura in A.B.No. 75 of 2021** and Hon'ble Guhati High Court in the case of **Biju Basumatary and 44 ors Vs. State of Assam in Bail Appln No. 1196/2019**.

9) Admittedly, the offence committed by the accused are very brutal and serious one. They have committed murder of two persons out of which one was infant and other was 70 years of age. They have brutally assaulted other relatives of the complainant. Not only that, but they have raped three ladies out of which one was minor. Police recorded statement of the employee of the petrol-pump showing on the date of incident co-accused came and has purchased petrol from the said petrol-pump which was used for setting fire shed of she-goats and hut.

The complainant in the complaint stated that she belongs to Pardhi community. She has not stated the castes of the offender. It is true that, in the case of **Prithviraj Chuvan Vs. Union of India A.I.R. 2020 S.C. 1036** wherein it is held that:

“ Section 438 of the Cr.P.C. Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act,1989, anticipatory bail bar created by S.18 and 18-A against grant of anticipatory bail in case of atrocities against member of S.C. & S.T. shall not be applied unless prima-facie case is made out.”

10) It is true that, if the statement of the complainant and other witnesses are properly scrutinized, they have not specifically stated names of the applicants stating that they were present at the spot and taken part in the incident of assault, murder and rape. Names of the applicant is disclosed after due interrogation of arrest of accused namely Datta Sitaram Mahajan and Khandu Rajendra Raut. According to me, opportunity is require to be given to the police to collect the evidence against the applicants who are absconding since registration of the crime against them. If they are arrested, then police can collect evidence against them after custodial interrogation. Still muddemal property is required to be recovered from the accused. In such circumstances, according to me, it is not fit case to grant anticipatory bail to the applicants.

Hence, I proceed to pass the following order.

:: O R D E R ::

- 1]** Application is rejected.
- 2]** Inform to the concern Police Station accordingly.

Date: 21 -01-2022.
Place: Beed.

Sd/- 21-01-2002
(**Ulhas.T.Pol.)**
Addl. Sessions Judge,
Beed.

Dictated on 18-01-2022

Typed on 20-1-2022

Checked and signed on 21.1.2022

I affirm that the contents of this PDF file are word to word as per original order.

Sd/-

**(Bhalekar V.L.)
Stenographer Grade-1
District Court-1 Beed**