

ORDER BELOW EXH.92 IN SPL CASE NO.293/2023**(CNR : MHPU14-003218-2023)****(Passed on : 4th August, 2026)**

1. This is an application u/s 227 of the Code of Criminal Procedure, 1973 for discharging accused no.3 – Kavita Shivaji Nikam, accused no.5 Shirikant Rajaram Nikam and accused no.6 Samir Rasool Shaikh.
2. Perused the application and reply thereon filed by Ld. APP at Exh.95 and Ld. Counsel for original complainant at Exh.103. Heard Ld. Counsel for the accused, Ld. APP and Ld. Counsel for informant.
3. Ld. Counsel for the accused submitted that only allegation against the accused no.3,5 and 6 is that they abused and threatened the informant by referring to her caste. However, statement of the informant regarding the place of incident is contradictory. Moreover, there is no independent eye witness to the incident of abuses. Therefore, the offences under SC & ST (Prevention of Atrocities) Act,1988 are not made out against the accused no.3,5 and 6. The crime was registered against the accused due to political indulgence. Moreover, the spot of incident is not made clear from the FIR. Accordingly, it is prayed to discharge the accused no.3,5 and 6. To fortify his submissions, Ld. Counsel for accused has relied upon following authorities :

<u>Sr. No.</u>	<u>Name of parties</u>	<u>Citation</u>
1.	Smt. Usha Chopra Vs. State	2004 Supreme (Del) 969 (Hon'ble High Court of Delhi)
2.	Faujdar Yadav and others Vs. State of U.P. and Another	2026 AHC 7732 (Hon'ble Allahabad High Court)
3.	Swaran Singh @ Ors. Vs. State through Standing Counsel & Anr	2008 Supreme (SC) 1237 (Hon'ble Supreme Court)
4.	Maddi Sudarshan Kumar Vs. The State of A.P	Cri. Revn. Case No.1525/2018
5.	Christine Swaroop Raj & Ors. Vs. State and Ors.	2026 : DHC : 5767 Hon'ble Delhi High Court

4. Application is resisted by the Ld. APP and informant vide their reply at Exh.95 and 103. It is submitted that the application for discharge is wholly misconceived, devoid of merits. The offences are of serious in nature. *Prima facie*, there is sufficient evidence against accused no.3,5 and 6. FIR shows the allegation of abusing the victim by the accused no.3,5 and 6 by referring to her caste. Moreover, at this stage, the Court is not required to conduct a meticulous appreciation of evidence or determine its probative value. Furthermore, the grounds raised by the applicants relate to disputed questions of fact, which can only be adjudicated after recording of evidence during trial and therefore defence sought to be raised cannot be considered at the stage of discharge. Moreover, charge-sheet clearly discloses *prima facie* case against accused no.3,5 and 6. In short, it is contended that there are

adequate grounds for framing charges against accused no.3,5 and 6. Hence, it is prayed to reject the application.

5. It is a settled principle of law that while considering an application for discharge, the Court is not expected to undertake a meticulous examination or appreciation of the evidence as if conducting the trial. The Court is only required to ascertain whether the material collected during investigation, if taken at its face value, discloses sufficient grounds for proceeding against the accused. At this stage, the Court is not required to evaluate the probative value of the evidence or determine whether the prosecution is likely to secure a conviction. Keeping in mind aforesaid principles, I proceed to adjudicate the present application.

6. It is undisputed that there are no allegations of cheating, rape and illegal money lending against the accused no.3 to 6. Therefore, they are entitled to be discharged for the offence punishable under S.376 and 420 of the Indian Penal Code, 1860 as well as Section 42 and 43 of The Maharashtra Money Lending (Regulation) Act, 2014.

7. So far as submission of Ld. Counsel for accused no.3,5 and 6 regarding requirement of independent witnesses to make out the offence punishable under the provisions of The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1988, it is necessary to refer following landmark authorities.

8. In Hon'ble Supreme Court in ***Swaran Singh v. State*** reported in ***MANU/SC/7954/2008*** Hon'ble Apex Court held that :

"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 not in the public view. However, if the offence is committed outside the building e.g. on 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."

9. Similarly, in ***Hitesh Verma v. State of Uttarakhand*** reported in ***MANU/SC/0843/2020*** Hon'ble Apex Court held that

“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 & Ors. v. State](#) through Standing Counsel & Ors.5. 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 5 (2008) 8 SCC 435 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.”

10. A careful reading of the authorities referred to above makes it clear that there is a distinction between a 'public place' and 'any place within public view'. If the alleged incident occurs at a public place, which is ordinarily visible and accessible to members of the public, it would fall within the expression 'within public view'. In such a case, it is not mandatory for the prosecution to establish that independent members of the public had actually witnessed the incident. However, where the incident takes place at a private place, the requirement of 'public view' would be satisfied only if the incident is visible to, or actually witnessed by, persons other than the complainant and the accused. Thus, the necessity of proving that the incident was witnessed

by members of the public arises only when the incident is at a private place and not when it takes place at a public place. Therefore, I am not in agreement with the submission of Ld. Counsel for the accused no.3,5 and 6 that offence punishable under the provisions of The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act,1988 is made out if statement of independent eye witnesses are not recorded.

11. In the case at hand it is alleged that offence abusing and criminally intimidating the informant was occurred at Garud Garden which a public place. Moreover, perusal of FIR *prima facie* shows the allegation of intentional insult, criminal intimidation, abusing the informant, who is the member of Scheduled Caste, by referring her caste at the public place and intentionally insulting and intimidating the informant with intent to humiliate her. Therefore, *prima facie* offence punishable under Section 504, 506 r/w Section 34 of The Indian Penal Code, 1860, Section 3(1)(r), Section 3(1)(s), Section 3(2)(va) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of Protection of Civil Rights Act is made out against accused no.3,5 and 6. Therefore, accused no.3,5 and 6 are not entitled to be discharged for the offence alleged against them.

12. I have carefully gone through the other authorities relied upon by the Ld. Counsel for the accused no.3,5 and 6. It is significant to note that facts of those authorities are different from the facts of the

present case. Therefore, with due respect to the ratio laid down in those authorities, I hold that they are not helpful to the accused at this stage.

13. In view of aforesaid facts and circumstances of the case, application deserves to be partly allowed. Hence, I pass the following order :

ORDER

- 1) The application at (Exh.92) is hereby partly allowed.
- 2) Accused no.3,5 and 6 are discharged for the offence punishable under 376 and 420 of The Indian Penal Code, 1860 as well as Section 42 and 43 of The Maharashtra Money Lending (Regulation) Act, 2014.
- 3) Charge be framed against the accused no.3,5 and 6 for the offence punishable under Section 504, 506 r/w Section 34 of The Indian Penal Code, 1860 Section 3(1) (r), Section 3(1)(s), Section 3(2)(va) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of Protection of Civil Rights Act.

Date :- 04.08.2026

(Hitendra Urmila Anilkumar Wani)
Additional Sessions Judge, Baramati