

Akash @ Yallappa vs The State Of Karnataka And Anr on 23 January, 2025

Author: S.Vishwajith Shetty

Bench: S.Vishwajith Shetty

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NC: 2025:KHC-K:432
CRL.A No. 200349 of 2024
C/W CRL.A No. 200350 of 2024
CRL.A No. 200352 of 2024

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 23RD DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL APPEAL NO.200349 OF 2024 (U/S 14 (A)(2))
C/W
CRIMINAL APPEAL NO.200350 OF 2024 (U/S 14 (A)(2))
CRIMINAL APPEAL NO.200352 OF 2024 (U/S 14 (A)(2))

IN CRL.A.NO.200349/2024:
BETWEEN:

MAYAPPA S/O KENCHAPPA HOSATTI,
AGE: 68 YEARS, OCC: AGRICULTURE,
R/O. PADAGANUR TQ. DEVARA HIPPARAGI,
DIST. VIJAYAPUR-586101.

...APPELLANT

Digitally signed
by SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

(BY SRI SHIVANAND V. PATTANASHETTI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA THROUGH
R/BY ADDL. SPP KALABURAGI BENCH,
(THROUGH PSI, DEVARA HIPPARAGI
POLICE STATION, DIST VIJAYAPURA-586101).
2. ASHOK S/O SIDDAPPA KHADRI,
AGED ABOUT 41 YEARS, OCC: PRIVATE DIRVER,
R/O. PADAGANUR TQ. DEVARA HIPPARAGI,
DIST. VIJAYAPURA-586101.

...RESPONDENTS

(BY SMT. MAYA T.R., HCGP FOR R1
SRI D.P. AMBEKAR, ADVOCATE FOR R2)

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NC: 2025:KHC-K:432

CRL.A No. 200349 of 2024

C/W CRL.A No. 200350 of 2024

CRL.A No. 200352 of 2024

THIS CRL.A IS FILED U/SEC. 14 (A) (2) SC/ST (POA) ACT, PRAYING TO, I) THAT, THE HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE IMPUGNED ORDER DATED 20-12-2024 PASSED IN CRL.MISC NO. 1798/2024 BY II ADDITIONAL DISTRICT AND SESSIONS AND SPECIAL JUDGE, VIJAYAPURA. II) THAT, FOR THE REASONS ABOVE AMONGST OTHERS, IT IS HUMBLY PRAYED THAT, THE HON'BLE COURT BE PLEASED TO GRANT THE ANTICIPATORY BAIL TO THE APPELLANT/ACCUSED NO.2 AND DIRECT THE DEVARA HIPPARAGI POLICE TO RELEASE THE APPELLANT/ACCUSED NO.2 ON BAIL IN THE EVENT OF HIS ARREST IN DEVARA HIPPARAGI PS CRIME NO.132/2024 PENDING ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS JUDGE SPECIAL JUDGE, VIJAYAPURA FOR THE OFFENCES PUNISHABLE U/SEC. 118-(2), 133, 109, 352, 351 3(5) OF BNS ACT 2023 AND SEC. 3(1)(r), 3(1)(s), 3(2)(Va) OF SC/ST PA ACT, 2015.

IN CRL.A.NO.200350/2024:

BETWEEN:

BASAPPA S/O MAYAPPA HOSATTI,
AGE: 40 YEARS, OCC: AGRICULTURE,
R/O. PADAGANUR, TQ. DEVARA HIPPARAGI,
DIST. VIJAYAPUR- 586101.

...APPELLANT

(BY SRI SHIVANAND V. PATTANASHETTI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA THROUGH
R/ BY ADDL. SPP KALABURAGI BENCH,
(THROUGH PSI, DEVARA HIPPARAGI
POLICE STATION, DIST VIJAYAPURA 586101)

2. ASHOK S/O SIDDAPPA KHADRI,
AGED ABOUT 41 YEARS, OCC: PRIVATE DRIVER,
R/O. PADAGANUR TQ. DEVARA HIPPARAGI,
DIST VIJAYAPURA 586101)

...RESPONDENTS

(BY SMT. MAYA T.R., HCGP FOR R1
SRI D.P. AMBEKAR, ADVOCATE FOR R2)

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NC: 2025:KHC-K:432

CRL.A No. 200349 of 2024
C/W CRL.A No. 200350 of 2024
CRL.A No. 200352 of 2024

THIS CRL.A IS FILED U/SEC. 14-A (2) OF SC/ST (POA) ACT, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 20.12.2024 PASSED IN CRL.MISC.NO.1858/2024 BY II ADDITIONAL DISTRICT AND SESSIONS AND SPECIAL JUDGE, VIJAYAPURA. II) THAT FOR THE REASONS STATED ABOVE IT IS HUMBLY PRAYED THAT THE HON'BLE COURT BE PLEASED TO GRANT THE REGULAR BAIL TO THE APPELLANT / ACCUSED NO.1 IN DEVARA HIPPARAGI PS CRIME NO.132/2024 PENDING ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS AND SPECIAL JUDGE, VIJAYAPURA FOR THE OFFENCE PUNISHABLE U/SECS. 118(2), 133, 109, 352, 351, 3(5) OF BNS ACT 2023 AND SEC. 3(1)(r), 3(1)(s), 3(2) (Va) OF SC/ST PA ACT 2015.

IN CRL.A.NO.200352/2024:

BETWEEN:

AKASH @ YALLAPPA
S/O SHARANABASU @ BOLU RATTAL
AGE: 17 YEARS, OCC: STUDENT,
R/O. PADAGANUR TQ. DEVARA HIPPARAGI,
DIST.VIJAYAPUR
REPRESENTED BY GUARDIAN (FATHER) OF THE
PETITIONER SHARANABASU @ BOLU
S/O MAYAPPA RATTAL,
R/O. PADAGANUR, TQ. DEVARA HIPPARAGI,
DIST. VIJAYAPUR-586101.

...APPELLANT

(BY SRI SHIVANAND V. PATTANASHETTI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA THROUGH
R/BY ADDL. SPP KALABURAGI BENCH
(THROUGH PSI, DEVARA HIPPARAGI
POLICE STATION DIST. VIJAYAPURA 586101)

2. ASHOK S/O SIDDAPPA KHADRI,
AGED ABOUT 41 YEARS, OCC: PRIVATE DRIVER,
R/O. PADAGANUR TQ. DEVARA HIPPARAGI,

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NC: 2025:KHC-K:432
CRL.A No. 200349 of 2024
C/W CRL.A No. 200350 of 2024
CRL.A No. 200352 of 2024

DIST. VIJAYAPURA-586101.

...RESPONDENTS

(BY SMT. MAYA T.R., HCGP FOR R1
SRI D.P. AMBEKAR, ADVOCATE FOR R2)

THIS CRL.A IS FILED U/SEC. 14(A)(2) OF SC/ST (PA) ACT, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 20.12.2024 PASSED IN CRL.MISC.NO.1801/2024 BY II ADDITIONAL DISTRICT AND SESSIONS AND SPECIAL JUDGE, VIJAYAPURA. II) THAT, FOR THE REASONS STATED ABOVE AMONGST OTHERS, IT IS HUMBLY PRAYED THAT, THE HON'BLE COURT BE PLEASED TO GRANT THE ANTICIPATORY BAIL TO THE APPELLANT/ ACCUSED NO.3 AND DIRECT THE DEVARA HIPPARAGI POLICE TO RELEASE THE APPELLANT/ ACCUSED NO.3 ON BAIL IN THE EVENT OF HIS ARREST IN DEVARA HIPPARAGI PS CRIME NO.132/2024 PENDING ON THE FILE OF II ADDITIONAL DISTRICT AND SESSIONS AND SPECIAL JUDGE, VIJAYAPURA FOR THE OFFENCES PUNISHABLE U/SECS. 118-(1), 133, 109, 352, 351(2), 3(5) OF BNS ACT, 2023, SEC. 3(1)(r), 3(1)(s), 3(2), (va) OF SC/ST PA ACT, 2015.

THESE APPEALS COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

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CRL.A No. 200349 of 2024

C/W CRL.A No. 200350 of 2024

CRL.A No. 200352 of 2024

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY) Accused Nos.1 to 3 in Crime No.132/2024 registered by Devara Hipparagi Police Station, Vijayapur for the offences punishable under Sections 118(2), 133, 109, 352, 351, 3(5) of BNS, 2023 and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short 'the Act of 2015'), are before this Court in these three appeals filed under Section 14-A(2) of the Act of 2015, assailing the order dated 20.12.2024 passed in Crl.Misc.No.1858/2024, Crl.Misc.No.1798/2024 and Crl.Misc.No.1801/2024 by the Court of II Additional District and Sessions Judge and Special Judge, Vijayapur.

2. Heard learned counsel for the parties.

3. FIR in Crime No.132/2024 was registered by Devara Hipparagi Police Station, Vijayapur for the aforesaid offences as against the appellants herein on the basis of the first information dated 25.11.2024 received NC: 2025:KHC-K:432 from respondent No.2 herein, who is the father of the injured Kiran, aged about 16 years. In the said case, accused No.1 was arrested on 06.12.2024. The

bail application filed by him before the jurisdictional Sessions Court in Crl.Misc.No.1858/2024 was rejected on 20.12.2024. Therefore, he is before this Court in Criminal Appeal No.200350/2024. Apprehending their arrest in the said case, accused Nos.2 and 3 had filed Crl.Misc.Nos.1798/2024 and Crl.Misc.No.1801/2024 before the Court of II Additional District and Sessions Judge and Special Judge, Vijayapur and the said petitions were also dismissed on 20.12.2024. Therefore, accused No.2 is before this Court in Criminal Appeal No.200349/2024 and accused No.3 is before this Court in Criminal Appeal No.200352/2024.

4. Learned counsel for the appellants having reiterated the grounds urged in the appeal memorandum submits that the allegation of assaulting injured Kiran on his head with an iron rod is only as against accused No.1, NC: 2025:KHC-K:432 who is already arrested. Accused Nos.2 and 3 have allegedly assaulted injured Kiran and Premkumar with chappal and stones. The injured persons have not suffered any grievous injuries in the incident in question. He submits that omnibus allegations are made against all the accused with regard to abusing the victim referring to their caste and no specific allegation is made as against any one of the accused and therefore, the bar under Section 18 of the Act of 2015 cannot be made applicable. He submits that appellants do not have any criminal antecedents and accused No.3 is a student, aged about 17 years. He submits that appellants are ready and willing to cooperate with the police for the purpose of investigation. Accordingly, he prays to allow the appeals.

5. Per contra, learned High Court Government Pleader appearing for respondent No.1 and learned counsel appearing for respondent No.2 have opposed the prayer made in the appeals. They submit that in view of the bar under Section 18 of the Act of 2015, the prayer NC: 2025:KHC-K:432 made by accused Nos.2 and 3 for grant of anticipatory bail cannot be entertained. They also submit that the appellants have not made both the victims as party to the appeals as required under Section 15 of the Act of 2015. They further submit that the injured Kiran has suffered grievous injury on his head and accordingly, they pray to dismiss the appeals.

6. Perusal of the FIR would go to show that the first informant is the father of the victim Kiran, who is a student, aged about 16 years. The other victim Premkumar is said to be a friend of said Kiran. In the first information, nowhere it is stated that Premkumar also belongs to Scheduled Caste or Scheduled Tribe community. Though learned counsel for respondent No.2 has filed statement of objection opposing the prayer made in the appeals, even in the statement of objection, it is not contended that victim Premkumar also belongs to Scheduled Caste or Scheduled Tribe community and therefore, injured Premkumar cannot be considered as a victim within the NC: 2025:KHC-K:432 meaning of Section 2(1)(ec) of the Act of 2015, which reads as follows:

"2(1)(ec) - "victim" means any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;"

7. In the first information submitted by the father of the victim Kiran, it is stated that Kiran was being teased by his friend accused No.3 referring to his caste and on 24.11.2024 when Kiran had gone to bring milk from the milk store near the bus-stand in their village, accused No.3 allegedly informed him that accused Nos.1 and 2 had summoned Kiran. Accordingly, Kiran had accompanied accused No.3 - Akash to the place where accused Nos.1 and 2 were sitting. Accused Nos.1 and 2 allegedly abused

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NC: 2025:KHC-K:432 Kiran referring to his caste after seeing him and accused No.1 thereafter allegedly assaulted Kiran with an iron rod on his head and caused blood oozing injury. When Premkumar tried to interfere, accused No.1 assaulted him on his leg with an iron rod. Accused No.2, who is the father of accused No.1 allegedly assaulted Kiran on his back with his chappal and accused No.3 assaulted Kiran with a stone. Thereafter, all the accused persons allegedly abused Kiran and others, who had gathered there to pacify the fight, referring to their caste and went away from the spot. Accused No.1 is said to be the maternal uncle of accused No.3 and accused No.2 is the father of accused No.1. The allegation of assaulting Kiran with an iron rod on his head is only as against accused No.1, who is in custody. Accused No.1 is arrested on 06.12.2024 and is in custody for the last more than one month. Undisputedly, he has no other criminal antecedents. Accused Nos.2 and 3 allegedly had assaulted Kiran with chappal and stones respectively. Even as per the FIR, blood oozing injury was caused to Kiran only as a result of assault made by

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NC: 2025:KHC-K:432 accused No.1. In the FIR registered on the basis of the first information submitted by respondent No.2, only offence punishable under Section 118(1) of BNS, 2023 is invoked and the offence punishable under Section 118(2) of BNS, 2023, which is corresponding to Section 326 of IPC is not invoked. Therefore, it is apparent that the injured have suffered only simple injuries in the incident in question.

8. Learned High Court Government Pleader has submitted that injured Premkumar has suffered only simple injuries in the incident in question. The photograph of injured Kiran produced by learned counsel for respondent No.2 along with his statement of objection would also prima facie go to show that he has suffered only simple injury on his head. Even otherwise, accused No.1 who has caused the said injury is in custody for the last more than one month. Perusal of the first information would go to show that there is no specific allegation as against any one of the accused about they abusing the

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NC: 2025:KHC-K:432 victim Kiran or the other persons belonging to the said community who had gathered to pacify the fight by referring to their caste. Therefore, I am of the opinion that the bar under Section 18 of the Act of 2015 cannot be strictly made applicable in the present case for considering the anticipatory bail application of accused Nos.2 and 3. Accused No.2 is aged about 68

years and he is said to be the father of accused No.1 and grandfather of accused No.3. Accused No.3 is a student, aged about 17 years. Under the circumstances, I am of the opinion that the prayer made by the appellants/accused Nos.1 to 3 in these three appeals needs to be granted. Accordingly, following order is passed:

ORDER The appeals are allowed.

The impugned orders passed by the Court of II Additional District and Sessions Judge and Special Judge, Vijayapur dated 20.12.2024 in CrI.Misc.No.1858/2024,

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NC: 2025:KHC-K:432 CrI.Misc.Nos.1798/2024 and CrI.Misc.No.1801/2024 is set aside.

The appellant/accused No.1 is directed to be enlarged on bail in Crime No.132/2024 of Devara Hipparagi Police Station, Vijayapur, registered for the offences punishable under Sections 118(2), 133, 109, 352, 351, 3(5) of BNS, 2023 and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, pending before the Court of II Additional District and Sessions Judge and Special Judge, Vijayapur, subject to the following conditions:

- a) Appellant shall execute personal bond for a sum of Rs.1,00,000/- with two sureties for the likesum, to the satisfaction of the jurisdictional Court.
- b) Appellant shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts her appearance for valid reasons.

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- c) Appellant shall not directly or indirectly threaten or tamper with the prosecution witnesses.
- d) Appellant shall not involve in similar offences in future.

The respondent - Police or any other police in the State of Karnataka are directed to release the appellants/accused Nos.2 and 3 in the event of their arrest in Crime No.132/2024 registered by Devara Hipparagi Police Station, Vijayapur, for the offences punishable under Sections 118(2), 133, 109, 352, 351, 3(5) of BNS, 2023 and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, pending before the Court of II Additional District and Sessions Judge and Special Judge, Vijayapur, subject to the following conditions:

1. Appellants shall appear before the Investigating Officer within 15 days from the date of receipt of certified copy of this order and shall execute a personal bond for a sum of Rs.50,000/- each with two sureties for the

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NC: 2025:KHC-K:432 likesum to the satisfaction of the investigating officer.

2. Appellants shall regularly appear before the Trial Court without fail unless exempted by the Trial Court for valid reasons.

3. Appellants shall not tamper with the prosecution witnesses and they shall co-operate with the police for investigation and appear before them whenever called upon.

4. Appellants shall not involve in similar offences in future.

Sd/-

(S.VISHWAJITH SHETTY) JUDGE SRT CT:PK