

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.806 OF 2022

1. Mohan s/o Manik Bhete
 2. Manik s/o Sahebrao Bhete
 3. Mangal w/o Manik Bhete
 4. Guddi s/o Manik Bhete
- .. Appellants**

Versus

1. The State of Maharashtra
Through Investigating Officer,
Tofkhana Police Station, Ahmednagar
Tq. and Dist. Ahmednagar
 2. Rekha w/o Vishwanath Kasbe
- .. Respondents**

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Mr. N. B. Narwade, Advocate for appellants.
Mr. A. M. Phule, APP for respondent No.1 - State.
Mr. R. N. Chavan, Advocate for respondent No.2.

...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 23rd JANUARY, 2023.

JUDGMENT :-

. **Admit.**

2. Present appeal has been filed under Section 14-A(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") by the appellants, who have been added as accused later on and now they have been posed as accused Nos.2 to 5. Their application, i.e. Bail

Application No.1693 of 2022, under Section 438 of the Code of Criminal Procedure came to be rejected by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ahmednagar on 15.10.2022 on the ground that it is barred under Section 18 of the Atrocities Act. The FIR vide Crime No.859 of 2022 has been registered at the behest of present respondent No.2 on 03.10.2022 with Tofkhana Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 307, 504, 506, 498-A, 323 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act. It will not be out of place to mention here that when the FIR is lodged it was only under Sections 307, 504, 506 of Indian Penal Code.

3. Heard learned Advocate Mr. N. B. Narwade for the appellant, learned APP Mr. A. M. Phule for respondent No.1 - State and learned Advocate Mr. R. N. Chavan for respondent No.2.

4. It has been vehemently submitted on behalf of the appellants that perusal of the FIR would clearly show that the appellants were residing separately in view of the fact that deceased and accused No.1 - Mahesh had performed inter caste marriage. In fact, the FIR was only against the husband of the deceased i.e. accused No.1 - Mahesh Manik Bhete, however, on the strength of supplementary statement, names of present appellants came to be included. The supplementary statement has been recorded on 07.10.2022 i.e. four

days after the registration of the FIR. In the supplementary statement, the informant has stated that on 17.01.2017, the present appellants along with Mahesh Bhete had gone to the house of the informant and abused her in the name of caste as well as to the daughter of the informant stating that on that count i.e. because of their caste, they will not be taking the daughter in the house and the marriage between deceased and Mahesh will not be performed. The daughter should be given understanding to that effect. The appellants along with Mahesh Bhete threatened the informant and her daughter stating that they should not stay there and if they stayed, the entire family would be killed. The informant has then stated that therefore they had left the said house in Dhawanwasti and had gone to stay at Sarjepura for about two years. She has also then stated that after deceased got married to Mahesh on 02.10.2018, which was after her abduction, she had not gone to meet the deceased, as the marriage was against their wish. It is then stated that deceased and Mahesh started residing in Dhawanvasti in a rented premises. Thereafter the informant started meeting deceased and thereafter came to know that the present appellants used to visit the house of the deceased, used to assault her and abuse her by saying that since she is member of Scheduled Caste, she will not be accepted as daughter-in-law of the house and, thereafter, they used to ill treat her by making demands of money for purchase of house and gold jewellery.

5. All these subsequent improvements in the supplementary statement is nothing but an indication to implicate all the members of the family. The investigation is over and the statements of witnesses would show that there is strong evidence against accused Mahesh Bhete in respect the day of the incident. He was arrested and thereafter he has discovered the weapon of murder and other articles. The physical custody of the appellants is absolutely not necessary and there is absolutely no evidence against them. It cannot be said that in any manner offence under the provisions of Atrocities Act has been made out against the present appellants, as there was no immediate FIR and now also it is coming as an allegation in the supplementary statement and not by way of FIR. The learned Special Judge has failed to consider all these aspects and wrongly held that the application is barred under Section 18 of the Atrocities Act.

6. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the appeal and supported the reasons given by the learned Trial Judge. It has been harped upon that the application under Section 438 of the Code of Criminal Procedure was not maintainable or barred under Section 18 of the Atrocities Act and therefore, the learned Special Judge was justified in rejecting the application. The learned Special Judge has also considered the seriousness of the offence. Respondent No.2 had filed complaint on 17.01.2017 and the photocopy of the same has

been produced showing that it was the Non Cognizable offence that was registered. It was also contended that if the police had not recorded proper FIR at that time, the informant cannot be said to be responsible for the same. Learned APP as well as learned Advocate for respondent No.2 have contended that very serious offence has been committed, as it has caused death of two persons. Though it appears that accused Mahesh is the author of the crime, yet the role of the appellants would be under the Atrocities Act as well as under Section 498-A of Indian Penal Code and, therefore, the appeal deserves to be dismissed.

7. At the outset, it is to be noted that the learned Special Judge has passed a very cryptic order. Further, it does not reflect as to whether there was compliance of Section 15A(3) and (5) of the Atrocities Act. Section 15A(3) of the Atrocities Act contemplates issuing notice or through prosecution, it has to be caused that the information about filing of the bail application by the accused should be made known to the victim or the informant and then Section 15A(5) contemplates mandatory hearing to be given to such victim or informant when he or she causes appearance. The order in bail application by any Special Judge under the Atrocities Act should reflect whether the mandatory provisions have been complied with or not.

8. In ***Prathvi Raj Chauhan Vs. Union of India and others, [(2020) 4 SCC 727]***, it has been observed that :-

“Concerning the applicability of provisions of section 438 Cr.P.C, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (I) shall not apply. We have clarified this aspect while deciding the review petitions.”

In view of the aforesaid observations, the concerned Judge has to consider whether a *prima facie* case under the Atrocities Act has been made out and if it is made out, it is against whom, in case where there are more than one accused in the matter. The bar under Section 18 of the Atrocities Act would come into play only when the application is filed by an accused apprehending his arrest, that means the application is under Section 438 of the Code of Criminal Procedure. Under these circumstances, it has to be the endeavour of the Special Judge to see whether *prima facie* case has been made out under the Atrocities Act or not and the discussion to that effect has to be made. A cryptic order is not contemplated when it comes to offence under the Atrocities Act in respect of a bail application.

9. Now, the position stands in this case is the charge-sheet is filed in this case on 28.12.2022. The bail application that was filed by the present appellants was rejected by the learned Special Judge on

15.10.2022, however, this Court by order dated 19.10.2022 had granted interim relief to the appellants. Filing of charge-sheet presupposes that the investigation is almost over. If it is not complete, then the prosecution should point out which part is remaining that too under Section 173(8) of the Code of Criminal Procedure. When the charge-sheet is filed after the protection was granted to the appellants, yet it appears that the investigating officer had not arrested the appellants and has not released them on bail as per the interim order passed by this Court. It will have to be presumed now that since the investigation is over, the physical custody of the appellants for the purpose of investigation, is not required. Another point is that the date of incident as per the prosecution story is 03.10.2022 at about 11.00 a.m. As regards the events that had taken place on or around 11.00 a.m. as reflected from the statements of the witnesses on record would show that all those allegations are against husband Mahesh. Presence of the present appellants is not stated by any of the witnesses in their statements under Section 161 of the Code of Criminal Procedure. At the cost of repetition, it can be said that initially the offence was not registered under the Atrocities Act. In the supplementary statement recorded about three days after the FIR there are allegations against the present appellants. What would be the evidentiary value of the supplementary statement would be considered by the Trial Court at the relevant stage, but even if we take the supplementary statement as it is, it reflects some incident

dated 17.01.2017 and 02.10.2018. The question would be why the report was not filed with the police immediately on the same day or within the reasonable time explaining the delay. If we consider the N.C.R. No.74 of 2017 dated 17.01.2017 filed by respondent No.2, it reflects that it was against accused - Mahesh, one Neeta Bhete and their mother. It has been tried to be lodged only under Sections 323, 504 and 506 of Indian Penal Code and there was absolutely no whisper about the alleged abuses in the name of caste by the appellants. Thus when she had gone to the police station, yet she has not lodged proper report as it appears in respect of alleged incident dated 17.01.2017. The point of delay therefore tilts in favour of the appellants. The second incident is stated to be taken place on 02.10.2018 and, thereafter, the fact remains is that by that time deceased was got married with Mahesh and they were residing separately. In the FIR, the informant has stated that due to the inter-caste marriage, the parents of Mahesh had not taken the deceased as well as accused No.1 inside the house and, therefore, they started residing on rental basis in the house of one Dattu Kasbe. Deceased had son aged 2 from Mahesh. When the appellants had not even taken the deceased inside their house (as per the contentions in the FIR) the contrary statement in supplementary statement will have to be considered even at this *prima facie* stage against the prosecution. In the FIR, it is also stated that by taking disadvantage of the fact that the appellant No.1 is in police department, accused No.1 Mahesh had

given threats prior to the marriage. It is unfortunate that the father of the deceased as well as deceased succumbed to the injuries alleged to have inflicted by accused Mahesh, but as regards the role to the present appellants are concerned, except supplementary statement, there appears to be no such serious document. There is no *prima facie* case attracting the offence under the Atrocities Act against the appellants as it suffers from delay and also laches on the part of the investigating officer that there is no clear investigation in respect of the non cognizable offence under Section 323, 504 and 506 of Indian Penal Code dated 17.01.2017. The learned Special Judge erred in holding that the application is barred under Section 438 of the Code of Criminal Procedure. The application ought to have been allowed taking into consideration the allegations, role attributed to the appellants. The appeal, therefore, deserves to be allowed. Hence, the following order :-

ORDER

- I) The appeal stands allowed.
- II) The order passed in Criminal Bail Application No.1693 of 2022 by the learned Special Judge under the Atrocities Act/Additional Sessions Judge, Ahmednagar on 15.10.2022 is hereby set aside. The said application stands allowed.
- III) The order passed by this Court granting ad-interim relief to the appellants in Criminal Appeal No.806 of 2022 on 19.10.2022 stands confirmed and made absolute. In other words,

in the event of arrest of appellants in connection with Crime No.859 of 2022, registered with Tofkhana Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 307, 504, 506, 498-A, 323 of Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act, they be released on P.R. Bond of Rs.15,000/- each with one surety each in the like amount, if not already released.

IV) The appellants shall not tamper with the prosecution evidence.

V) They shall not indulge in any criminal activity.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm