

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.1 OF 2020

1. Satish s/o Gopal Sodnar
Age : 19 years, Occu.: Agril.,
2. Balaji s/o Pandurang Shrirame,
Age : 45 years, occu.: Agril.,
3. Pundlik s/o Govindrao Pandhare,
Age : 48 years, Occu.: Agril.,
4. Nemaji s/o Shivaji Naik,
Age: 42 years, Occu.: Agril.,
5. Mahipati s/o Dadarao Naik,
Age : 50 years, Occu.: Agril.,
All R/o Kurula, Tq. Kandhar,
Dist. Nanded.

... **APPELLANTS**

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station Kandhar,
Tq. Kandhar, Dist. Nanded.
2. The Superintendent of Police,
Nanded, Dist. Nanded.
3. Sagar s/o Shrirang More,
Age: 17 years, Occu.: Labour,
Under Guardianship of his father
Shrirant s/o Kalba More,
Age: Major, Occu. Labour,
R/o: Kurula, Tq. Kandhar,
Dist. Nanded

... **RESPONDENTS**

**WITH
CRIMINAL APPEAL NO.2 OF 2020**

Baban s/o Dadarao Naik
Age : 43 years, Occu.: Agril.,
R/o. Kurula, Tq. Kandhar,
District Nanded

... **APPELLANT**

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station Kandhar,
Tq. Kandhar, Dist. Nanded.
2. The Superintendent of Police,
Nanded, Dist. Nanded.
3. Sagar s/o Shrirang More,
Age: 17 years, Occu.: Labour,
Under Guardianship of his father
Shrirang s/o Kalba More,
Age: Major, Occu.: Labour,
R/o: Kurula, Tq. Kandhar,
District Nanded.

... **RESPONDENTS**

.....
Mr. Sham B. Patil, Advocate for appellants.
Mr. P. K. Lakhotia, APP for respondents-State.
Mr. Rahul Totla, Advocate for respondent No.3 (Appointed).
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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 20-01-2020

PRONOUNCED ON : 17-03-2020

JUDGMENT :

. **Admit.**

2. The appellants have filed present appeals under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act,

1989 (hereinafter referred to as “the Atrocities Act”) to challenge rejection of their applications i.e. Miscellaneous Criminal (Bail) Application No.213 of 2019 and Miscellaneous Criminal (Bail) Application No.214 of 2019 by the learned Special Judge/Additional Sessions Judge, Kandhar on 24-12-2019.

3. The appellants were apprehending their arrest in Crime No.334 of 2019 registered with Kandhar Police Station, District Nanded for the offences punishable under Sections 341, 143, 147, 148, 323, 504 of Indian Penal Code and Sections 3(1)(r)(s), 3(1)(d)(e), 3(2)(5-A) of the Atrocities Act. The said FIR was lodged at the behest of respondent No.3. Their application for pre-arrest bail came to be rejected on the ground that *prima facie* case has been made out and there is bar under Section 18-A of the Atrocities Act.

4. Heard learned Advocate Mr. Sham B. Patil for appellants, learned Advocate Mr. Rahul Totla for respondent No.3 and learned APP Mr. P. K. Lakhotia for respondents-State.

5. It has been vehemently argued on behalf of the appellants that learned Special Judge failed to consider that there was a cross complaint, which was filed by Satish Sodnar against the informant and it was lodged prior in time to the FIR lodged against him. Offence under Section 324, 504 of the Indian Penal Code came to be registered against the informant and

therefore, in order to give a cross check, informant has come with a concocted story. The learned Special Judge also failed to consider, that there was inordinate delay in lodging the report. The incident is stated to have taken place at about 6.00 to 6.15 p.m. on 04-12-2019 and FIR came to be lodged on 05-12-2019 at 19.59 hours. The inordinate delay has not been explained. Though it is stated that he was referred to Nanded, yet, offence punishable under Section 323 of Indian Penal Code has been registered. The allegations against the informant would show, that he had attacked Satish Sodnar with a razor. When there is such material on record which would show that the intention of the informant to lodge the report is not *bona fide*, the Special Judge ought not to have held that there is bar under Section 18 of the Atrocities Act.

6. Per contra, learned APP as well as learned Advocate for respondent No.3 (appointed) submitted that the contents of the FIR clearly indicate that accused Satish had abused “मोटार सायकल बाजुला घे मांगड्या” in the name of caste. Further, accused Sachin had assaulted the informant by means of fiber pipe and accused Balu Pandurang Shrirame had assaulted father of the informant by whip and then the father of the informant was also abused by Nemaji and Mahipat as “मांगड्याचा पाय मोडा काहीच होईनामारा याला मारा”. Therefore, there was clear bar under Section 18 of the Atrocities Act.

7. Perusal of the papers would show that Satish Sodnar had lodged report against the informant at 3.38 p.m. on 05-12-2019. He says that he was attacked by the informant by razor. He was then referred to Kandhar Hospital and then again further to Nanded Hospital. After taking treatment, he came back and then lodged the report. Such course could have been definitely adopted by the informant also. Therefore, there appears to be *prima facie* delay in lodging the FIR by present respondent No.3 and there is such material on record to infer that the present FIR is afterthought.

8. The Medico Legal Certificate of the informant shows that he has, in all, three injuries. Two are contusions and one is incised wound, however, it is also simple and stated to be by sharp object. His FIR does not say use of any sharp object. Another part to be noted from his Medico Legal Certificate that in the remarks column it is stated that “patient was drowsy, alcohol ingested”. Informant is 17 years old boy, but then it appears that he had consumed alcohol or such substance making him drowsy at the time the alleged incident took place.

9. Learned Advocate for the appellants has relied on certain decisions of this Court viz., :-

- 1) **Lahu s/o Vitthalrao Bhosale Vs. The State of Maharashtra and another (Criminal Appeal No.194 of 2019) decided by the Division**

Bench on 03-04-2019.

2) Kiran s/o Madhukar Ingle Vs. The State of Maharashtra and another (Criminal Appeal No.787 of 2018) decided on 26-02-2019.

3) Janardhan s/o Rambhau Tawde and others Vs. The State of Maharashtra and another (Criminal Appeal No.1134 of 2019) decided on 13-12-2019.

In all these cases, this Court has held that “even after the amendment in the Atrocities Act, if *prima facie* case is not made out or it is shown that the FIR is the outcome of a *mala fide* intention, then definitely there will not be a bar for entertaining pre-arrest bail application.” Further, in the recent pronouncement by the Hon’ble Apex Court in **Prathvi Raj Chauhan Vs. Union of India and others** [WP (C) No.1015 of 2018] delivered on 10-02-2020, it has been observed that :-

“Concerning the applicability of provisions of section 438 Cr.PC, 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.”

Therefore, in view of this legal position, there was no absolute bar to entertain the pre-arrest bail application and as aforesaid it appears that

some incident had definitely taken place. However, the FIR lodged by one of the accused is prior in time, in which the present informant is an accused. Possibility cannot be ruled out that the alleged imputations in the name of caste have been made either to protect himself from the litigation by the other side or with *mala fide* intention. Further, as regards the abuses to the father of the informant is concerned, it is stated that two or more persons had given those abuses in chorus, which cannot be a reality. For this, reliance can be placed on the decision in **Shashikant Ramhari Tambe & Others Vs. State of Maharashtra [2008 All MR (Cri.) 2132]**. Therefore, case is made out to release the appellants on anticipatory bail. Learned Special Judge erred in not considering the facts and circumstances as well as the legal position in proper perspective. Hence, the impugned orders deserve to be set aside by allowing the appeals. Hence, the following order :-

ORDER

- I) Both the appeals stand allowed.
- II) The orders passed in Miscellaneous Criminal (Bail) Application No.213 of 2019 and Miscellaneous Criminal (Bail) Application No. 214 of 2019 by learned Special Judge/Additional Sessions Judge, Kandhar on 24-12-2019 are hereby set aside.
- III) Both the applications before the learned Special Court

stand allowed.

IV) In the event of arrest of the appellants in Crime No.334 of 2019 registered with Kandhar Police Station, District Nanded for the offences punishable under Sections 341, 143, 147, 148, 323, 504 of Indian Penal Code and Sections 3(1)(r)(s), 3(1)(d)(e), 3(2)(5-A) of the Atrocities Act, they be released on P.R. Bond and S.B. of Rs.15,000/- (Rs. Fifteen Thousand only) each.

V) The appellants shall not tamper with the evidence of prosecution in any manner.

VI) The appellants should remain present before the Investigating Officer on every Saturday between 10.00 a.m. to 1.00 p.m. till filing of charge sheet. They shall cooperate with the investigation.

VII) The fees of the appointed Advocate for respondent No. 3 in both the cases is quantified at Rs.6,000/- (Rupees Six Thousand Only). High Court Legal Services Authority, Sub-committee Bench at Aurangabad to make the said payment.

[SMT. VIBHA KANKANWADI, J.]

SCM