

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 35 OF 2020

- 1) Ramesh Bhujangrao Solanke,
Age 62 years, Occupation Agriculture,
R/o Mohkhed Tq. Dharur Dist.Beed.
- 2) Shesherao Balasaheb Solanke,
Age 58 years, Occupation Agriculture,
R/o Mohkhed Tq. Dharur Dist.Beed.
- 3) Narayan Bhujangrao Solanke,
Age 73 years, Occupation Agriculture,
R/o Mohkhed Tq.Dharur Dist.Beed.
- 4) Meghraj Ramesh Solanke,
Age 25 years, Occupation Agriculture
and Business,
R/o Mohkhed Tq.Dharur Dist.Beed.
- 5) Samadhan @ Sambhaji Ramesh
Solanke,
Age 21 years, Occupation Agriculture,
R/o Mohkhed Tq.Dharur Dist.Beed.
- 6) Kanifnath Shivajirao Solanke,
(named as Natha Shivaji Solanke in
the FIR)
Age 36 years, Occupation Agriculture,
R/o Mohkhed Tq.Dharur Dist.Beed.
- 7) Shivaji Anjanrao Solanke,
Age 69 years, Occupation Pensioner,
R/o Mohkhed Tq.Dharur Dist.Beed.

**...Appellants.
(Original Accused)**

VERSUS

- 1) The State of Maharashtra,
Through Police Station Sirsala,
Dist. Beed.
- 2) Mangalbai w/o Kisan Ujgare,
Age 45 years, Occupation Household
and Labour,
R/o Mohkhed Tq.Dharur Dist.Beed. **...Respondents
(Respondent No.2 is
original informant)**

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Advocate for Appellants : Mr. S. J. Salunke.
APP for Respondent No.1-State : Mr. B. V. Virdhe.
Advocate for Respondent No.2 : Mr. R. G. Hange.
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CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 04-03-2020.

JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, the appeals are admitted.
3. By consent the appeals are taken up for final disposal.
4. Present appeal has been filed by the original accused persons under Section 14-A (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Section 438 of Code of Criminal Procedure to challenge the order of rejection of their

application i.e. Miscellaneous Criminal applications No.409 of 2019, 410 of 2019, 411 of 2019 and 412 of 2019 by learned Additional Sessions Judge, Majalgaon Dist. Beed on 01-01-2020, thereby rejecting their applications for anticipatory bail in connection with Crime No.330 of 2019 dated 20-12-2019, registered with Police Station, Sirsala Dist. Beed for the offences punishable under Section 306, 143, 147, 149, 506 of Indian Penal Code and Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Heard learned advocate Mr. S. J. Salunke for the appellants, learned Additional Public Prosecutor Mr. B. V. Virdhe for respondent No.1 – State and learned advocate Mr. R. G. Hange representing respondent No.2 – the original informant.

6. It has been vehemently submitted on behalf of the appellants that, learned Additional Sessions Judge failed to consider that though an earlier offence was registered against some of the present appellants on the basis of the First Information Report lodged by the deceased, yet those appellants were released on bail in the said earlier offence. Even the surety who had undertaken the surety-ship of some of the appellants have been implicated in this case only to

see that they are still behind bar. A false contention has been raised that after the First Information Report was lodged, there was an attempt on the part of the present appellants to compromise the matter, and under the pretext of compromise, the deceased was harassed. No offence attracting the provisions under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be said to be attracted on the face of the First Information Report and, therefore, the learned Additional Sessions Judge ought not to have observed that, the application for pre-arrest bail was not maintainable under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The police have invoked offence punishable under Section 306 of Indian Penal Code, however the essential ingredients of the said offence are missing in the First Information Report. If the deceased would have been threatened to compromise the earlier dispute, then he would not have registered the report against the accused. That alleged incident is stated to have taken place on 25-07-2019 and it is unimaginable that the said threat to compromise would have continued till 12-04-2019. The learned Special Judge ought to have released the present appellants on bail.

7. Per contra, the learned advocate appearing for the respondent No.2 – original informant as well as learned Additional Public Prosecutor supported the reasons given by the learned Special Judge while rejecting the applications, and it was vehemently submitted that, the appellants had every knowledge that the deceased was a member of the scheduled caste. The earlier incident had taken place on 25-07-2019 and immediately the deceased had lodged report. Even though the present appellants were released on bail, yet the chronology of the events which have been stated by the informant in the First Information Report now before this Court would clarify that, since then the talks of compromise were initiated through or on behalf of the appellants. A meeting was then stated to have been organized on 12-04-2019 at about 08.00 p.m. to 09.00 p.m. The said meeting was attended by all the appellants and they had threatened the deceased and his father to withdraw the said case. The husband of the informant i.e. deceased had in fact met the police officer on 15-12-2019 and tried to lodge a report about the incident dated 14-12-2019, yet when it was told by the police inspector that he need not worry and he had undertaken that nothing will happen to the deceased, no further action was taken.

However, the deceased went missing from 19-12-2019 and his dead body was found on 20-12-2019. The deceased has left a suicide note which depicts what happened and how he was under pressure. Therefore, there is sufficient material even at this *prima facie* stage to show that the appellants had driven the deceased to commit suicide. There is clear statutory bar for entertaining an application under Section 438 of Code of Criminal Procedure.

8. Before we proceed it is to be noted that, present appellant No.6 was not the accused in the earlier First Information Report, however he is the surety to accused Ramesh i. e. appellant No.1 when the appellant No.1 has been released on bail in the earlier crime. Further the appellant No.7 is also not an accused in the earlier offence but he stood as surety to present appellants No.2 and 3 and one Alka who was accused in that case. Appellants No.1 to 5 are the accused persons in the earlier offence also. Perusal of the First Information Report vide crime No.174 of 2019 dated 25-07-2019 would show that, it was lodged by Namdeo Bhiva Ujgare stating that the present appellants No.1 to 5 and Alkabai Ramesh Solanke had raised dispute with him on 25-07-2019, abused him in the name of caste and assaulted him. That crime was registered for

the offences punishable under Section 143, 147, 149, 323 of Indian Penal Code and Section 3 (1) (r) and 3 (1) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. It appears that, the present appellants No.1 to 5 came to be released on bail in that offence and as aforesaid present appellants No.6 and 7 stood as surety to those accused persons. Further it appears that, the present appellants No.1 to 5 approached this Court by filing criminal Application No.3622 of 2019 under Section 482 of Code of Criminal Procedure for quashing the First Information Report. It appears that, the Division Bench of this Court has issued notice and the said application is still pending for its adjudication. That means, the said First Information Report is not yet quashed.

9. In the present First Information Report i.e. Crime No. 330 of 2019 present respondent No.2 has contended that, on 14-12-2019 when she along with her husband and others were at home, one Natha Shivaji Solanke went to her house and told her husband that, a meeting has been organized for compromise of the Atrocity Case lodged about six months ago by his father. Therefore, the husband of the informant went along with said Natha. He returned after about half to one hour and then disclosed to the informant that seven

persons were present in the said meeting, and they pressurized and gave threat to kill for compromise of the complaint filed by the father. Deceased Kisan Namdeo Ujgare then went to Police Station on 15-12-2019 and met police officer Pawar and requested him to take his First Information Report back, however Pawar gave him assurance that nothing will happen to him and it would be his responsibility. The informant says that, her husband was under mental stress thereafter. He went out of the house about 8.00 to 9.00 a.m. on 19-12-2019 by saying that, he is not feeling well and, therefore, he would go to village Adas and take some medical treatment. When he did not return till evening, the informant who is his wife gave phone call on the two mobile numbers of the deceased yet she could not trace him out. Ultimately she lodged missing complaint regarding her husband. Police Inspector Dongare told her that the tower location of the mobile phones of her husband is in Mohkhed. Therefore, on 20-12-2019 the informant, her father and son went to village Mohkhed. They searched for the deceased and found his dead body in hanging position to a tree. In the area known as 'Chambhar Khor'. Police was called and in the search of the person of the dead body, they found suicide note which had blamed the present appellants No.1 to 5. On the same day the

informant has lodged the First Information Report.

10. At the outset from the above said contents of the First Information Report it can be seen that, there is a connection of this incident to the earlier incident i.e. the First Information Report lodged by Namdeo Ujgare. The contents of the suicide note definitely blames the present appellants No.1 to 5. Though it is stated that, even appellants No.6 and 7 were present at the time of meeting, yet there is nothing in the First Information Report to disclose that there was any enmity or ultimate interest of the sureties in driving the deceased to commit suicide. Though they were also knowing that the deceased was a member of Scheduled Caste, yet their presence at the time of the alleged meeting for compromise, cannot be taken as the *prima facie* case for which their liberty should be curtailed. However, regards the appellants No.1 to 5 are concerned, when they had the knowledge that deceased, his father are the members of the Scheduled Caste, yet when threats to kill were given in order to pressurize the deceased as well as his father to withdraw the case, then definitely *prima facie* case is made out and, therefore, there is clear bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act.

11. Perusal of the police papers would also show about the contents of the suicide note, statements of witnesses which are in consonance with the First Information Report and, therefore, the learned Special Judge was justified in rejecting the application for pre-arrest bail in respect of appellants No.1 to 5. However, as regards the appellants No.6 and 7, there is no such *prima facie* case and, therefore, in view of the decision in *Prithviraj Chavan v. Union of India*, Writ Petition No.1015 of 2018, decided by Hon'ble Apex Court on 10-02-2020 the appeal deserves to be allowed to the extent of appellants No.6 and 7 only. It will not be out of place to mention here that, this Court on 20-01-2020 had granted ad-interim relief in favour of appellants No.6 and 7 and, therefore, the said ad-interim deserves to be confirmed now. Hence, following order.

ORDER

- 1) The appeal is hereby partly allowed.
- 2) The appeal stands rejected in respect of appellants No.1 to 5.
- 3) The appeal stands allowed in respect of appellants No.6 and 7.

4) The order passed in Miscellaneous Criminal Application No.409 of 2019 by learned Additional Sessions Judge, Majalgaon on 01-01-2020 and in Miscellaneous Criminal Application No.412 of 2019 by same Special Court on the same day to the extent of appellants No.7 are hereby set aside.

5) The order passed by this Court on 20-01-2020 in respect of the appellants No.6 and 7 stands confirmed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.