

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

CRIMINAL APPEAL NO.84 OF 2020

1) Bapusaheb s/o Laxman Darandale
Age: 50 Yrs., occu. Pvt. Service
R/o R.M. 288, Shivalaya Chowk,
Bajaj Nagar, MIDC, Waluj,
Aurangabad.

2) Manda w/o Bapusaheb Darandale
AGE: 45 Yrs., occ. Household,
R/o R.M. 288, Shivalaya Chowk,
Bajaj Nagar, MIDC, Waluj,
Aurangabad.

= **APPELLANTS**
(orig. Accused)

VERSUS

1) The State of Maharashtra
Through MIDC Waluj Police
Station, Tq.& Dist.Aurangabad

2) Sow.Varsha w/o Arun Medhe
Age: 35 Yrs., occ: Service
R/o R.M. 288/1, Shivalaya Chowk,
Bajaj Nagar, MIDC, Waluj,
Aurangabad.

= **RESPONDENTS**
(Resp.No.2 is orig.
informant)

Mr.NK Kakade, Advocate for Appellants;
Mr.BV Virdhe, APP for Respondent No.1-State;
Mr.RN Chavan, Advocate for Respondent No.2.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 5th March, 2020

PRONOUNCED ON : 8th May, 2020

JUDGMENT

1. Heard. Admit. Learned Counsel for parties

waive service for respective respondents. With consent of learned Counsel for the parties, taken up for final disposal.

2. Present appeal has been filed by original accused under Section 14(A) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the Atrocities Act) with Section 438 of Cr.P.C. in order to challenge the order of rejection of their bail petition No.78/2020 passed by learned Additional Sessions Judge, Aurangabad (Special Court) on 17.1.2020.

3. It has been submitted on behalf of the appellants that they are apprehending arrest at the hands of M.I.D.C., Waluj Police Station in respect of Crime No.12/2020 dated 07.01.2020, on the basis of the First Information Report lodged by the respondent No.2, for the offences punishable under Section 294, 452, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(w)(i) (ii), 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act

(hereinafter referred to as "The Atrocities Act").

It has been submitted that since 2011 the appellants, informant and two more persons were residing by making construction on plot, which is under the jurisdiction of Maharashtra Industrial Development Corporation. They were residing as family members and there were no dispute between them. An encroachment was made by the respondent No.2, and it was requested by the appellants that she should remove it, which was causing inconvenience to the appellants. When she did not, the appellants approached the concerned authority from M.I.D.C. by making a complaint application dated 22.07.2019, requesting for the removal of the encroachment. Thereafter, the appellants were continuously pursuing the authorities to remove that encroachment by the respondent No.2. The appellants had visited the office at M.I.D.C. on 06.01.2020, and when the respondent No.2 got knowledge about the said action taken by the appellants, she went to Police Station and lodged the report on 07.01.2020. Therefore, the said First Information Report has been lodged with mala fide intention. Perusal of the First Information

Report would show, that the alleged incident dated 18.12.2019 had taken place inside the house of the informant and therefore, it was not within the public view, as contemplated under Section 3 (1) (r) of the Atrocities Act. As regards the alleged incident dated 19.12.2019 is concerned, it also does not attract the ingredients, as she has not stated that anybody had viewed the incident. Further, as the First Information Report has been lodged with mala fide intention, there is no obstacle for grant of ad interim relief and no bar under Section 18 of the Atrocities Act.

4. Further, reliance has been placed on the decision of this Court in Criminal Appeal No.944/2019 decided on 16th December, 2019 in the case of Bhaktaraj Parasram Angulwar Vs. State of Maharashtra and Anr., wherein this Court held that, if the provisions of Section 3(1)(r)(s) of the Atrocities Act, are not prima facie attracted, then it will not create a statutory embargo, as provided under Section 18 and 18(A) of the Atrocities Act to consider the application. This Court had taken a note of the earlier pronouncements and made the

said observations. Similar pleas have been also taken by the other High Courts in the cases of Darbara Sibngh Vs. State of Punjab and Anr. (CRM.M.No.49604 of 2019 decided on 13.1.2020) and Pankaj D.Suthar Vs. State of Gujarat – LAWS(GJH)-1991-7-30.

5. Learned APP as well as learned Advocate for Respondent No.2 submitted that though F.I.R. in this case has been shown to have been filed on 7.1.2020; yet a written complaint about the said incident was filed by the informant on 19.12.2019 itself. Photo copy of the said complaint has been made available. It has also been stated that even earlier on 26.5.2016, a complaint was filed by the informant against the present appellants in respect of the allegations that they have abused her in the name of caste. Perusal of the FIR would definite show that prima facie case has been made out to invoke the provisions under the Atrocities Act. Specific abuses have been given in the name of caste. This Court, at this stage, cannot go into the aspect as to whether the FIR is filed with malafide intention or not and, therefore, when

prima facie things are required to be seen and when they are fulfilled, naturally, it would place statutory embargo at its position and, therefore, such pre-arrest bail application cannot be entertained. The FIR clearly shows that the incident at about 9.30 am on 19.12.2019 had taken place when the appellants were outside the house of the informant and she was inside the house. Therefore, it was within "public view" and, therefore, the provisions of section 3(1)(r)(s) of the Atrocities Act are attracted.

6. Learned Advocate for Respondent No.2 has relied on the decision by the Division Bench of this court in the case of Bajirao Narayan Deshmukh Vs. State of Maharashtra and Ors. - (2015) 3 Bom CR (Cri.) 190, wherein it has been held that, Section 2(1)(f) of the Atrocities Act, provides that where words and expression have not been defined in this Act, but are defined in IPC, same shall have meanings assigned to them in Code. Offence of insult in Section 504 of IPC can be proved by words used; signs made or visible representations same way insult can be proved. For

proof Section 3(1)(x) It has to be proved that the offence was to be committed in "public view" As per the Apex Court, (2009) 2 Bom.CR (Cri.) 431 (SC), meaning of this place is "within public view" when it can be seen by public, persons, passing by saw or heard incident. Old provision of Section 3(1)(x) of the Act and new provision of Section 3(1)(r) and (s) show the provision of Section 3(1)(x) is kept in tact. As per Section 3(1)(r) of giving abuses is separated in Section 3(1)(s) of new provision. But, ingredient of "public view" is still there in new provision. Therefore, though as per the informant, she might have been in the house; yet both the accused, who were outside the house and, therefore, they were in "public view" and their abuses could have been heard by public at large. It is also pointed out that the statements of the witnesses would show that people have heard the appellants abusing the informant in the name of caste and, therefore, definitely, prima facie case is made out and, therefore, the Special Court was not justified in holding that there is clear bar under Section 18 and 18(A) of the new Act.

7. It will not be out of place to mention here that this Court, by a detailed order passed on 30th January, 2020, had granted ad interim protection to the present appellants. Now, when the police papers are produced, it is required to be seen as to whether a case is made out to grant pre-arrest bail or such application itself was debarred in view of Section 18 or 18(A) of the Atrocities Act? The ratio laid down in both the aforesaid authorities cannot be disputed; yet we will have to take into consideration the recent pronouncement by the Hon'ble Apex court in the case of Prithviraj Chouhan Vs. Union of India and Ors. (Civil Writ Petition No. 1015/2018 decided on 10.2.2020), wherein, at para No.10, it has been observed thus,

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"10. 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."

Further, by his separate judgment, Hon'ble Justice Ravindra Bhat, has agreed to the judgment proposed by the Hon'ble Judges on the Bench; yet there is supplement to the said judgment in the opinion of Hon'ble Justice Ravindra Bhat, wherein it has been observed thus, -

"20. I would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under [Section 438](#) of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament. "

Thus, it can be seen that the Hon'ble Apex court is

of the view that when there is no prima facie offence made out in the FIR itself, then there is no bar to grant pre-arrest bail. Therefore, it is required to consider as to whether in the present case, prima facie case has been made out or not?

8. The contents of the FIR show that it is in respect of two incidents. First is stated to have taken place on 18.12.2019 at about 4.00 pm. However, the contents of FIR itself show that both the appellants had gone inside the house of the informant and then abuses were given. Therefore, definitely it does not attract the basic ingredients of "public view" as is required for Section 3(1)(r) and 3(1)(s) of the Atrocities Act. Now, as regards the incident alleged to have taken place at 9.30 am on 19.12.2019, it is stated that both the appellants went in front of the house of the informant and uttered, *"Aamhi Kahihi Karu, pan ya societyeet ekahi mahardyala rahu denar nahi."* Thereafter, both the appellants rushed towards the informant and gave her threats to kill by pouring kerosene on her person and ablaze.

9. The first and foremost fact that is required to be considered is that, as per the FIR, already abuses were given at about 4.00 pm on 18.12.2019 and then it is stated that, again on the next day i.e., on 19.12.2019 at about 9.30 am, abuses were given. The FIR is totally silent as to any incident had taken place, which had prompted the appellants to go the house of the informant on 18.12.2019 or even after the alleged incident of 18.12.2019 till 9.30 am of 19.12.2019. Without any reason as to why the appellants would go to the house or in front of the house of the informant to give abuses to the informant or her family. There is a reference of earlier complaint, but, it says that incident had taken place on 26.5.2016. There is absolutely no explanation as to how was relationship between 2016 to 2019. Much has been said on behalf of Respondent No.2 that, in fact, she had given the said complaint on 19.12.2019 itself. However, perusal of photo copy of the complaint shows that there is absolutely no mention as to the incident dated 18.12.2019. Whatever she says is about the incident taken place at 9.30 am of the same date and the said earlier incident of

26.5.2016. In the photo copy of the complaint dated 19.12.2019, she does not say that both the appellants were outside the house and she was inside. It is also silent about presence of one neighbor viz. Khandre Aaji. Thus, it appears that there is apparent improvement in the said written complaint that was filed on 19.12.2019 and the FIR dated 7.1.2020. The statements of the witnesses have been recorded in the month of February 2020. The statements of other witnesses, though they say, that they were present, do not disclose their presence either in the written complaint dated 19.12.2019 or in the FIR dated 7.1.2020. The statement of Khandare Aaji, i.e. Mangala Sanduji Khandre would show that the alleged incident of 4.00 pm on 18.12.2019 had taken place inside the house of the informant and even at that time, she had intervened and then she says that on the next day also, she had intervened when the incident had taken place at 9.30 am on 19.12.2019. But, then she specifically states that she has no idea about the dispute between them. All these minutes things are required to be considered for the simple reason that the appellants have come up with a case that

though the plot was purchased, at the same time in January 2011 by husband of the informant and the appellants; yet after some construction has been carried out on the road, the road to the house of the appellants was blocked, he made complaint to MIDC on 22.7.2019. Perusal of copy of the said complaint would show that it was not against the named person, but it is stated that as the member has blocked the road, MIDC should inspect it and should give road to the appellants. Thereafter, it appears that reply was given by the MIDC on 8.1.2020 pursuant to the complaint dated 22.7.2019 wherein it is stated that in spite of informing about unauthorized construction, it has not been removed and, therefore, it should be removed immediately otherwise action would be taken under MRTTP Act. It is the specific statement by the appellants that, appellant no.1 had approached the MIDC authorities to pursue action in respect of his complaint dated 22.7.2019 on 6.1.2020 and, therefore, the informant had raised a concocted story. No doubt the photo copy of the complaint has been filed by the informant dated 19.12.2019 bears acknowledgment of the police station on the

same date. Therefore, the said point canvassed by the appellants that as he went to MIDC to pursue action on 6.1.2020, the FIR has been lodged may not be correct; yet it can be seen from the contents of the FIR, even prima facie observations can be made that it is filed with malafide intention and it does not attract the provisions under the Atrocities Act.

10. Another important point to be noted is that perusal of the complaint application as well as the FIR would show that every time it is stated that after the husband of the informant goes out of the house for office, it is said that the appellants have done the alleged act. This is surprising. In fact, when as per the FIR itself, the informant and the appellants are residing since January 2011; yet till 2016, there appears to be no dispute amongst them. Then suddenly what had happened, which would spoil their relationship is a question and there is no answer to it in the FIR. The intention behind alleged abuses cannot be gathered and, therefore, it cannot be said to be 'intentional insult'. Therefore, in view of

decision in the case of Prithviraj Chouhan (supra) this Court is of the opinion that, case was made out to grant pre-arrest bail to the appellants. There was no bar either under Section 18 or 18(A) of the Atrocities Act. Taking into consideration the entire circumstances, even at this prima facie state, this Court can go into the aspect as to whether there is malafide intention behind lodging the FIR or not. The learned Special Judge failed in not exercising his jurisdiction and had seen all the aspects very apparently, which is not the tenor of the above pronouncements by the Hon'ble Apex court as well as this court.

11. In view of the foregoing discussion the appeal deserves to be allowed and it is accordingly allowed. The impugned order passed by the learned Special Judge, thus stands set aside. The ad interim protection granted earlier by this Court on 30th January, 2020 is hereby made absolute and confirmed.

12. It is clarified that the directions as to attend the police station now deserves to be

cancelled taking into consideration that sufficient opportunity was given the police for investigation. Only a condition that is required to be imposed on the appellants is that they shall not tamper with the evidence of the prosecution in any manner.

13. The appeal as well as the application filed for pre-arrest bail by the appellants-applicants stand allowed and disposed of on above terms.

(SMT. VIBHA KANKANWADI,J.)

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