

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

CRIMINAL APPEAL NO.94 OF 2020

- 1 Shahezaad @ Shahzeb Khan Gaffar Khan Pathan,
Age 19 yrs., Occ. Education,
R/o Azad Nagar, Parli,
Tq. Parali, Dist. Beed.
- 2 Sayed Feroz Sayed Sadek,
Age 20 yrs., Occ. Labour,
R/o Old Railway Station, Parli,
Tq. Parali, Dist. Beed.

... **Appellants**

... **Versus** ...

- 1 The State of Maharashtra,
Through Police Station, Sambhaji Nagar,
Parali, Vaijinath, Dist. Beed.
- 2 A.B.C.

... **Respondents**

...

Mr. S.J. Salunke, Advocate for appellants

Mr. B.V. Virdhe, APP for respondent No.1

Mr. P.D. Jarare, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 12th MARCH, 2020

PRONOUNCED ON : 12th MAY, 2020

JUDGMENT :

1 **Admit.**

2 Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as, “the Atrocities Act”) to challenge the rejection of bail application, under Section 439 of the Code of Criminal Procedure filed by the present appellants, by the learned Additional Sessions Judge, Ambajogai in Criminal Bail Application No.13/2020 dated 17.01.2020.

3 Heard learned Advocate Mr. S.J. Salunke for appellants, learned APP Mr. B.V. Virdhe for respondent No.1-State and learned Advocate Mr. P.D. Jarare for respondent No.2.

4 It has been vehemently submitted on behalf of the appellants that the perusal of the First Information Report lodged against the present appellants would make it clear, that offence under Atrocities Act is not attracted. It was contended by the present respondent No.2-original informant, that when she and her friend were proceeding, at that time the present appellant had outraged her modesty. Even she has stated that she had slapped the appellant, yet the appellant, who on motorcycle along with

another person shouted "I love you". The entire contents of the FIR do not say that the appellant was knowing the informant, especially that she is a member of the Scheduled Castes or Scheduled Tribes. Under such circumstance, the learned Additional Sessions Judge/Special Judge ought not to have rejected the application. Further, a very cryptic order has been passed only on the ground that the offence is stated to be serious and the informant is a student of 10th class and she was attending the classes, considering the forthcoming examination. That is not a ground, where liberty of a person should be curtailed. He, therefore, prayed for release of the appellants on bail.

5 Per contra, the learned APP appearing for the prosecution as well as appointed Advocate for the informant submitted, that the FIR is very much clear, as to under which circumstances the offence has been committed. Even after giving slap to the appellant by the informant he was bent upon outraging her modesty. Further, taking into consideration the fact that the informant is undergoing the examination of 10th class, it will not be proper that the appellant should be released on bail. The father of the informant has filed his affidavit-in-reply and stated that he is a driver by profession and earns livelihood on the basis of his occupation. He has three daughters who are taking education. The informant girl is frightened and is under mental

stress. Taking into consideration the incident that had taken place and it was revealed by her that the appellant is doing such activities since last six months prior to the date of incident. She is a minor, and therefore, the offence under POCSO Act is also attracted. Therefore, it will not be proper to release the appellant on bail.

6 At the outset, it can be said that prima facie perusal of the FIR would show, that the appellant was knowing the informant since many days earlier to the report, that was filed on 02.01.2020. The informant is giving specific name of the appellant and she states that one unknown person was with him on the motorcycle. It is stated that when the informant and her friend were proceeding to the coaching class, at that time, appellant and the unknown person came on motorcycle and gave cut to them. They had gone ahead but they again came back and then the appellant told informant, that he wants to talk to her. At that time, she had given slap to him and she proceeded further. Again by giving cut to them the motorcycle driven by the appellant went ahead and again by coming back them stood near the informant and her friend. However, at the same time, one person came from behind, and therefore, the appellant went ahead but shouted "I love you" by saying and laughing at the informant. Immediately the informant had informed the said incident on phone to her father and the person who was

near to them, after watching the girls in frightened condition left them to the class. Father of the informant informed the coaching class teacher that the girls should not be sent unless somebody from their house would come to pick them up. After the class was over the mother and one more known person to the informant started going towards house of informant, however, even at that time the appellant and the said unknown person came on motorcycle towards them. Informant disclosed that those are the two persons, who had given them harassment in the morning. The mother and the known person to the informant tried to catch the appellant. The unknown person on the motorcycle fled away. However, the mother of the informant and one Bapu asked the appellant, as to how he is harassing the girls, at that time, the appellant pushed them and fled away. Thereafter, the informant lodged the report stating that the present appellant used to follow her though he was knowing that the informant is a member of Scheduled Castes.

7 Thus, the contents aforesaid of the FIR would make it clear that the accused had the knowledge about the caste of the informant. Police at this stage have invoked **Section 3(1)(w)(ii)** of the Atrocities Act, which runs thus -

“uses, words, acts or gestures of a sexual nature towards a woman

belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.”

Further, the police have also invoked **Section 3(2)(va)** of the Atrocities Act, which runs thus -

“commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.”

Apart from that, offence is also registered under Section 12 of the POCSO Act, which provides for punishment for sexual harassment as defined in Section 11 of the said Act. The other sections invoked are under Indian Penal Code. Accused came to be arrested on 03.01.2020 and since 07.01.2020 he is under Magisterial Custody. The application, which he had filed, was under Section 439 of Cr.PC., and therefore, it was incumbent upon the Special Judge to use the parameters to be considered for the application under Section 439 of Cr.PC..

8 Perusal of the impugned order would show that it was a very cryptic order. No doubt, the informant was a student of 10th class and her examinations were scheduled in March, 2020. The application of the appellant was rejected on 17.01.2020. Therefore, it was not proper on the

part of the Special Judge to consider the reason that is the examination to be scheduled in March, when he was dealing with the application in January. Important point to be noted is, that though the appellant had approached this Court on 22.01.2020, yet, after adopting the proper procedure the arguments could be heard only on 12.03.2020. Another fact, which will have to be placed on record is, that after the arguments were heard on 12.03.2020, the matter was reserved for orders. However, after the lock-down was declared in view of the pandemic COVID-19 the matter could not be taken for pronouncement of Judgment since the Bench was not available.

9 Even after taking into consideration the affidavit-in-reply of the respondent No.2 and the schedule of the examination of the informant, now, the said reason is over. Schedule of the examination was from 03.03.2020 to 23.03.2020. All the papers were over except the Social Science (Geography), which was scheduled on 23.03.2020 and it was cancelled due to due to lock-down declared in view of pandemic COVID-19.

10 The perusal of the record would also make it clear, that even the charge sheet is ready and it has been filed before the Special Judge. Therefore, physical presence of the appellants is not necessary for investigation purpose. Therefore, case is made out to release the appellants on bail. However, taking into consideration the manner in which the offence

is committed, strict conditions are required to be imposed on the appellants. Hence, following order.

ORDER

- 1 Appeal is hereby allowed.
- 2 The order passed by learned Additional Sessions Judge/Special Judge, Ambajogai, Dist. Beed in Criminal Bail Application No.13/2020 dated 17.01.2020, is hereby quashed and set aside. The said application stands allowed.
- 3 The appellants be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand) each till the lock-down is entirely lifted. After the entire lock-down is lifted, they should, in addition, submit two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.
- 4 They shall not tamper with the evidence of prosecution in any manner.
- 5 They shall not commit any offence till the trial is over.

(Smt. Vibha Kankanwadi, J.)