

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.107 OF 2020

Sachin Chandrakant Walke
Age: 32 Yrs., occu. Agril.
R/o Vadgaon Darekar,
Tq. Daund, Dist. Pune. = APPELLANT

VERSUS

- 1) The State of Maharashtra
Through P.I. Shrigonda
Police Station, Shrigonda,
Dist. Ahmednagar
- 2) Sandeep Dipak Pole,
Age: 30 Yrs., occu. Agril.
R/o Vadgaon Darekar,
Tq. Daund, Dist. Pune. = RESPONDENTS

Mr.VV Tarde, Advocate for Appellant;
Mrs.Vaishali Jadhav-Patil, APP for Respondent-State;
Mr. RP Patwardhan, Adv. For Respondent No.2

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 3rd December, 2020.

ORAL JUDGMENT :-

1. Heard learned Advocates and learned APP
for respective parties.

2. Admit. Learned APP and learned
appointed Advocate waive notice for respective
Respondents. By consent of parties, taken up for
final disposal.

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3. Present appeal has been filed under Section 14(A) of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the Atrocities Act) to challenge order dated 21.1.2020 passed by learned Additional Sessions Judge, Shrigonda, District Ahmednagar in Criminal Bail M.A.No.34 of 2020 whereby the said bail application, filed under Section 438 of Cr.P.C., came to be rejected. The appellant is apprehending his arrest in connection with CR No.37/2020 dated 11.1.2020 registered with Shrigonda Police Station, District Ahmednagar for the offences punishable under Sections 3(1)(r)(s), 3(2)(v)(a) of the Atrocities Act and Sections 324, 341, 504, 506 of IPC.

4. It has been vehemently submitted on behalf of the appellant that initially when the FIR was lodged, it was only for the offences punishable under Sections 341, 504, 506 of IPC. However, later on, offences under the Atrocities Act, referred above, and Section 324 of IPC have been added and report to that effect has been given on 14.1.2020. This appears to be an afterthought act. No prima facie offence under the

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Atrocities Act was made out; yet the learned Special Judge has rejected the Bail Application on erroneous grounds. The appeal, therefore, deserves to be allowed.

5. Per contra, learned APP as well as learned Advocate appointed to represent cause of Respondent No.2-informant have strongly opposed the appeal. It is submitted by the learned APP that though initially the sections of the Atrocities Act were not added; yet it can be seen that the appellant-accused had knowledge about caste of the informant, as they belong from the same village, has committed the offence and, therefore, definitely the provisions of Section 3(2)(v)(a) of the Atrocities Act are attracted and, therefore, there is bar under Section 18 of the said Act. It is further submitted by the learned APP that the application filed by the appellant-accused for anticipatory bail is rightly rejected by the learned Special Judge.

6. At the outset, it can be seen from the impugned order that it is very much cryptic and

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passed without application of mind so also without taking into consideration the pronouncements of this Court as well as the Hon'ble Supreme Court, especially the pronouncement of the Hon'ble Apex court in the case of Prathvi Raj Chauhan Vs. Union Of India - (Writ Petition No.1015/2018 decided on 10 February,2020).

7. Perusal of the FIR would clearly show that it is registered only for the offences punishable under Sections 341, 504, 506 of IPC. The contents of the same do not disclose any abuses in the name of the caste. Even caste of the informant is not disclosed. Therefore, attracting the provisions of Section 3(1)(r) and 3(1)(s), of the Atrocities Act, was out of question. If we peruse the report dated 14.1.2020, it can be seen that the Police Officer himself has taken a ground that (it is not appearing in the FIR) the informant and the accused are from the same village and "the accused knows the caste of the informant and by giving insulting words, he was assaulted by a belt", was the statement given by the informant. Even if the supplementary statement of the

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informant is considered, it does not show specific abuses or the insulting words.

8. As regards the offence under Section 3(2) (v) is concerned, unless it is shown that the accused had knowledge about caste of the informant and the offence under the Schedule has been committed only with an intention to cause it against a member of particular caste, that provision does not get attracted. Those basic ingredients are *prima facie* not appearing in the contents of the FIR as well as the police papers those have been submitted. Though the witnesses are saying that the accused used the insulting words in the name of the caste, however, nobody has given those specific abusing/insulting words. Therefore, it will have to be observed that *prima facie* offence under the Atrocities Act is not made out. Further, in view of the decision of the Hon'ble Apex court in the case of Prathvi Raj Chauhan Vs. Union Of India – (supra) there will not be a bar under Section 18 of the Atrocities Act to the application for anticipatory bail. The application was definitely maintainable. Custody

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of the applicant is not at all required for the purpose of investigation. Under such circumstance, the appeal deserves to be allowed by setting aside the impugned order. Hence, following order, -

ORDER

i. The Criminal Appeal is hereby allowed;

ii. The order dated 21st January, 2020 passed by learned Additional Sessions Judge, Shrigonda, District Ahmednagar, below Exhibit-1 in Cri.(Bail) M.A.No.34/2020, is hereby set aside. The said application stands allowed.

iii. In the event of arrest of the appellant in connection with CR No.37/2020 dated 11.1.2020 registered with Shrigonda Police Station, District Ahmednagar for the offences punishable under Sections 324, 341, 504, 506 of IPC and Sections 3(1)(r)(s), 3(2)(v)(a) of the Atrocities Act, he be released on PR

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and SB of Rs.15,000/- each.

iv. The appellant shall not tamper with evidence of the prosecution in any manner. He shall not indulge in any criminal activity.

v. It is clarified that the observations made by this Court in this judgment are restricted to deciding the bail application only and the Trial Court shall not get influenced by the same while considering disposal of the case on merits.

vi. Fee of the appointed Advocate is quantified at Rs.5,000/-.

(SMT. VIBHA KANKANWADI,J.)

BDV