

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.297 OF 2020

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| 1. Ashok s/o Digambar Lakhe | |
| 2. Sambhaji s/o Dattatray More | |
| 3. Madhukar s/o Gorakh Lakhe | |
| 4. Nashir s/o Bashir Shaikh | |
| 5. Ranjit s/o Trimbak Dhepe | ... Appellants |

Versus

- | | |
|----------------------------------|-----------------|
| 1. The State of Maharashtra | |
| 2. Hanumant s/o Parmeshwar Nalpe | ... Respondents |

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Mr. S. B. Choudhary, Advocate for appellants.
Mrs. R. P. Gaur, APP for respondent No.1 – State.
Mr. S. D. Mundhe, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 14th October, 2020

PRONOUNCED ON : 5th November, 2020

ORDER :

. 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 their pre-arrest bail by learned Additional Sessions Judge / Special Judge, Bhoom in Criminal Bail Application No.37 of 2020 dated 13-03-2020. The present applicants are apprehending their arrest in connection with Crime No.30 of 2020

registered with Washi Police Station dated 18-02-2020 for the offences punishable under Sections 327, 363, 342, 324, 323, 143, 147, 148, 149, 506 of Indian Penal Code, under Section 92(b) of the Rights of Persons with Disabilities Act, 2016 and under Section 3(2)(va) of the Atrocities Act.

2. Heard learned Advocate Mr. S. B. Choudhary for appellants, learned APP Mrs. R. P. Gaur for respondent No.1 – State and learned Advocate Mr. S. D. Mundhe for respondent No.2.

3. The learned Advocate appearing for the appellants vehemently submitted that there is inordinate delay in lodging the FIR. The incident is stated to have taken place in the intervening night of 14-02-2020 to 15-02-2020. Informant states that he was discharged from the hospital on 16-02-2020. Yet, the FIR has been lodged on 18-02-2020. It can be presumed that he has concocted the story. He has intentionally inserted the name of his labour, who is member of Scheduled Caste, just to attract the provisions of the Atrocities Act. The FIR also gives an impression that the accused persons had forcibly taken away Rs.10,170/- from the pocket of informant's pant. It is, in fact, hard to believe that a person would be sleeping at a place, outside his house, by keeping that much cash in his pocket. That story is also unbelievable. Informant is not member of either Scheduled Caste or Scheduled Tribe and for the sake of arguments even if we accept his story then, only the Sections under Indian Penal

Code would be applicable and, therefore, custodial interrogation of the appellants is not at all necessary. Learned Special Judge failed to consider all these aspects.

4. Per contra, learned APP and learned Advocate for respondent No.2 strongly opposed the appeal and submitted that though the informant is not member of Scheduled Caste or Scheduled Tribe, yet, when because of him his labour, who is member of Scheduled Caste, was assaulted and the fact that the said labour belonged to Scheduled Caste was known to the present appellants, then it will have to be inferred that they had intention to commit the said offence. Appellant No.1 was the Deputy Sarpanch of the village and, therefore, he ought not to have taken the law in his hands. He was indebted to the informant, but he was avoiding the payment. When informant asked him to pay the dues, he had involved other accused persons and forcibly took the informant near a temple. They wanted to involve the informant in a theft case and, therefore, entire scene was created. Statement of the police person, who had taken the informant and his labour to police station, would show that they had tried to inform it to the police that they have not committed any such theft or tried to commit theft. Yet, when they were taken by police, they were treated as an accused. The informant is a handicapped person and could not have committed theft of battery of a solar street light. The police person specifically states that they had referred the informant and the labour to hospital. No FIR

was lodged by appellant No.1 or anybody else against the informant and his labour. The police have stated that since nobody had come, offence was not registered against the informant and labour. But then after the discharge, the informant has lodged the report. The custodial interrogation of the appellants is necessary. So also, as there is intentional act against member of Scheduled Caste, the application under Section 438 of the Code of Criminal Procedure was barred under Section 18 of the Atrocities Act.

5. It is necessary to see as to what information has been lodged by respondent No.2 on 18-02-2020. Respondent No.2 runs a hotel near his agricultural land at Jawalka Shiwar Tq. Washi, Dist. Osmanabad. He has engaged labour by name Anil Dagdu Kamble since about three years prior to the information. Said Anil Kamble is member of Scheduled Caste. It is stated that the present appellants had every knowledge about the caste of Anil. Amount of Rs.12,000/- was due from appellant No.1 to the informant in connection with Elections of 2019. Informant asked him to pay those dues. Appellant No.1 had avoided on one or the other pretext. A phone call was given by the informant to appellant No.1 on 14-02-2020. Appellant No.1 told him that he should write the account and he would give the amount within two days. On the said date, after 10.00 p.m. when the hotel was closed, Anil Dagdu Kamble and one Baba Masa Gaikwad slept in the hotel itself. Informant went to his house. Informant, his wife and son were sleeping in front of their house. At about 1.30 a.m. on 15-02-

2020, due to barking of dog, the wife of the informant woke up. Appellant No.1 asked to catch her as informant will not go anywhere. Informant was referred as handicapped (लंगड). Informant's wife, thereafter, concealed herself behind the house, but then the appellant Nos.1, 3 and 5 forcibly took informant on motorcycle to Shendi Phata. He was assaulted by two persons with Chappal and by appellant No.1 by stick. Appellant No.1 took out Rs.10,170/- from the pocket of his pant. They had intention to kill him and throw him in forest area, but then that idea was dropped. They were brought back to the square near temple. He was again assaulted. The appellants brought the battery of the solar lamp on the ground from pole and it was shown that the informant had tried to steal it away. It is further stated that on the say of appellant No.1, appellant Nos.2 and 4 went to the hotel of the informant and brought Anil Kamble to the said place. He was also assaulted and, thereafter, phone call was given to Washi Police Station stating that they had caught hold of thieves. Police came around 3.30 a.m. and took informant and Anil Kamble to Washi. As they had received injuries, they were referred to Government Hospital. Informant was further referred to Civil Hospital, Osmanabad and then discharged on 16-02-2020. Taking note of the contents of the FIR, it can be seen that the offence under Atrocities Act was not in connection with the informant, because informant has given his caste as Maratha. At this stage, it can be said that no evidence has been produced by the prosecution as to when Anil Kamble was discharged and

why he has not given any complaint. The explanation has not been given on behalf of the prosecution as to why immediately on the same day around 3.30 a.m., the FIR was not taken in respect of the allegations by the informant. It is hard to believe that the informant would not have told anything to police. Thus, there appears to be inordinate delay in lodging the report. The dispute appears to be between appellant No.1 and the informant which is in respect of the amount allegedly due from appellant No.1 to him. There appears to be no motive as against Anil Kamble. Section 3(2)(va) of the Atrocities Act has been invoked, which requires that such offence ought to have been committed against the member of Scheduled Caste knowing it fully well and only because that person belongs to a particular caste. Contents of the FIR though tried to be in those words, do not spell that it was with the said intention. Possibility of concocting the story cannot be ruled out taking into consideration the inordinate delay. As regards the other appellants are concerned, there appears to be absolutely no motive. Merely on the say of appellant No.1, whether they would have acted is a question. There is substance in the say of appellants that it is hard to believe that a man would sleep outside his house by keeping cash more than Rs.10,000/- in the pocket of his pant at night time. When the FIR appears to be filed with some *mala fide* intention or with some suppression of fact, then we cannot say that bar contemplated under Section 18 of the Atrocities Act would come in way. *Prima facie* offence should be shown when it comes to the said bar

under Section 18 of the Atrocities Act. Here, help can be taken from the observations 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, wherein 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.”

6. The other Sections under Indian Penal Code do not require the physical custody and, therefore, the case is made out to allow the appeal. All these aforesaid aspects were not considered properly by the learned Special Judge. The aspect of delay has not been properly considered. The explanation for delay has been inferred by the learned Special Judge, when it is in fact not in the FIR itself and, therefore, following order is passed :-

ORDER

- I) Appeal stands allowed.
- II) The order passed by learned Additional Sessions Judge, Bhoom in Criminal Bail Application No.37/2020 dated 13-03-2020, is hereby set aside. The said application stands allowed.

III) In the event of arrest of appellants viz.,(1) Ashok s/o Digambar Lakhe; (2) Sambhaji s/o Dattatray More; (3) Madhukar s/o Gorakh Lakhe; (4) Nashir s/o Bashir Shaikh and; (5) Ranjit s/o Trimbak Dhepe in connection with Crime No.30 of 2020 registered with Washi Police Station dated 18-02-2020 for the offences punishable under Sections 327, 363, 342, 324, 323, 143, 147, 148, 149, 506 of Indian Penal Code, under Section 92(b) of the Rights of Persons with Disabilities Act, 2016 and under Section 3(2)(va) of the Atrocities Act, each one of them be released on P. R. & S. B. of Rs.15,000/- each.

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

V) The appellants shall remain present before the Investigating Officer on every Saturday between 10.00 a.m. to 2.00 p.m. till conclusion of the trial.

VI) The appellant shall not indulge in any criminal activity.

VII) They shall co-operate with the investigation.

[SMT. VIBHA KANKANWADI, J.]