

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.306 OF 2020

Dipak Vyankatrao Yadav,
Age 50 yrs., Occ. Agri.,
R/o At Post – Kallam, Mhsul Kolni,
Tq. Kallam, Dist. Osmanabad.

... Appellant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Shiradhon Police Station,
Dist. Osmanabad.
- 2 Padmraj Gautam Sarvade,
Age 26 yrs., Occ. Agri.,
R/o At Post – North Bhimnagar,
Shiradhon, Tq. Kallam,
Dist. Osmanabad.

... Respondents

...

Miss. Tanvi V. Jadhav, Advocate for appellants

Mr. S.P. Tiwari, APP for respondent No.1-State

Mr. Sandeep Andhale, Advocate (appointed) for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th AUGUST, 2020

JUDGMENT :

2 Present appeal has been filed by the original accused under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order of rejection of his Criminal Bail application No.113/2020 by learned Special Judge, Osmanabad on 23.03.2020. The appellant is apprehending his arrest in connection with Crime No.36/2020 dated 08.03.2020 registered at Shiradhon Police Station, Dist. Osmanabad for the offence punishable under Section 323, 324, 504, 506, 109, 427, 452, 143, 147, 148, 149 of the Indian Penal Code and under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 Heard learned Advocate Miss. Tanvi V. Jadhav for the appellant and learned APP Mr. S.P. Tiwari for respondent No.1-State. Though the respondent No.2-original informant was served, he remained absent, and therefore, this Court had appointed Advocate Mr. Sandeep Andhale to represent the cause of respondent No.2. Heard Advocate Mr. Sandeep Andhale also.

4 The learned Advocate appearing for the appellant submitted that the contents of the FIR would show, that the incident had taken place at about 9.00 to 9.30 a.m. on 06.03.2020, in the house of informant, which cannot be the place in public view, therefore, whatever the utterances might

have been stated will not attract the offences under Atrocities Act. Further, the FIR says, that as regards the said incident there was a compromise on the same day. But on the next date i.e. 07.03.2020 when members from Bhimnagar were fetching water, at that time, three unknown persons shouted, that whether it was not sufficient for those persons on the earlier day that they were beaten and they have lost. She has submitted that the contents of the FIR are absolutely not attracting the offence under Atrocities Act, therefore, there is no question of bar under Section 18 or 18-A of the said Act and it was the wrong legal notion of the learned Special Judge, that only the High Court has power, as clarified by Hon'ble Supreme Court in the case of **Prithviraj Chavan vs. Union of India in Writ Petition No.1015 of 2018** decided by Hon'ble Apex Court on 10.02.2020. The reasons have not been properly assigned, which shows non application of mind, and therefore, she prayed for anticipatory bail for the appellant.

5 Per contra, the learned APP and learned appointed Advocate for the respondent No.2 supported the reasons given by the learned Special Judge and submitted, that when the appellant was member of the group, which had forcibly entered the house of the informant and then assaulted the informant and other family members by stick and wire, it has a communal angle and possibility of law and order situation cannot be ruled out, if

anticipatory bail is granted.

6 At the outset, this Court is again and again required to say, as to what should be the approach of the Special Judge under Atrocities Act to deal with the anticipatory bail application. In earlier matters also it has been observed, that Special Judge under Atrocities Act is required to consider the contents of the FIR, then come to a conclusion, as to whether the prima facie offence under the Atrocities Act is made out or not. If those contents are not making out offence under the Atrocities Act, then there is no hurdle to grant his anticipatory bail. It appears that the learned Special Judge has totally misinterpreted and misunderstood ratio in **Prithviraj Chavan's** case. As regards the powers of the Special Judge dealing with application under Atrocities Act with Section 438 of Cr.P.C., the said ratio in **Prithviraj Chavan's** case is applicable to the application before Special Judge. The Special Judge is then required to consider, whether those parameters have been made out or not. The basic ingredients of Section 3(1)(r)(s) of Atrocities Act have not been considered by the learned Special Judge. The contents of the FIR say, that the present appellant and other accused persons had entered the house of the informant and thereafter had abused him in the name of caste. House cannot be considered as a public place, and therefore, even at this stage the observation can be made, that the contents of the FIR were not disclosing the

ingredients of Section 3(1)(r)(s) of the Atrocities Act. Under the said circumstance, there was no question of bar under Section 18 of the said Act. The contents of the FIR further say, that, “..... त्यापैकी काहीजण ठार कर त्या महारग्याला” had uttered. He is disclosing name of four persons and also some other persons. So, out of them, who had exactly uttered it, has not been made clear. Abuse cannot be in chorus. For which I would like to rely upon **Shashikant Ramhari Tambe and others vs. State of Maharashtra, 2008 ALL MR (Cri.) 2132**. Another fact, which was not considered is, that according to the informant itself, the matter was compromised between the two communities on the same day. Merely because some unknown boys had said something with some ulterior motive, it appears that matter, which was burried by compromise, has been tried to be given rebirth by the informant. Therefore, taking into consideration all these aspects, the bail application ought to have been allowed. There is total non application of mind by the learned Special Judge, which is increasing the work of this Court.

7 For the aforesaid reasons, following order is passed.

ORDER

1 Appeal stands allowed.

2 The order passed by learned Special Judge, Osmanabad in

Criminal Bail Application No.113/2020 dated 23.03.2020, is hereby set aside.

3 The said application stands allowed.

4 Appellant be released on P.R. and S.B. of Rs.15,000/-.

5 The appellant shall not tamper with the evidence of prosecution in any manner.

6 He shall not indulge in any criminal activity.

7 Bail before concerned Special Judge.

8 The fees of the appointed Advocate is quantified Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

(Smt. Vibha Kankanwadi, J.)

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