

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.377 OF 2020

- 1 Tukaram Baburao Gore,
 Age 36 yrs., Occ. Agri.,
 R/o Ramdoh, Tq. Newasa,
 Dist. Ahmednagar.
 (Not pressed vide order dated 21.07.2020)
- 2 Ajay Namdev Gore,
 Age 25 yrs., Occ. Agri.,
 R/o as above.
- 3 Vijay Nanasaheb Borude,
 Age 22 yrs., Occ. Agri.,
 R/o as above.

... Appellants

... **Versus** ...

- 1 The State of Maharashtra
 Through : In-charge Police Inspector,
 Newasa Police Station, Newasa,
 Tq. Newasa, Dist. Ahmednagar.
- 2 Babanbai w/o Popat Shirsath,
 Age 60 yrs., Occ. Household,
 R/o Warkhed, Tq. Newasa,
 Dist. Ahmednagar.

... Respondents

...

Mr. A.B. Jagtap, Advocate for appellants

Mr. S.W. Munde, APP for respondent No.1

Mr. S.D. Khotkar, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02nd SEPTEMBER, 2020

JUDGMENT :

1 **Admit.**

2 At the outset, it is to be noted, that though the present appeal was filed by three persons for challenging the rejection of their application for anticipatory bail, the appellant No.1 was stated to be arrested on 17.07.2020 and therefore, the appeal was withdrawn as against him, and now the appeal is restricted to appellant Nos.2 and 3.

3 Heard learned Advocate Mr. A.B. Jagtap for appellants, learned AGP Mr. S.W. Munde for respondent No.1-State and learned Advocate Mr. S.D. Khotkar for respondent No.2.

4 It has been vehemently submitted on behalf of the appellants, that the perusal of the First Information Report would show, that the alleged abuses in the name of caste were uttered by one Balu Gadekar, who is the co-accused in the matter. But as regards the present two accused are concerned, it is stated, that they had assaulted the sons of informant by kick and fist blows as well as with stone. Ingredients of Section 3(1)(r), 3(1)(s) and 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act are not at all attracted, and therefore, there was no question of bar under Section 18 of the Act. The ratio laid down in **Prithviraj Chavan vs. Union of India in Writ Petition No.1015 of 2018** decided by Hon'ble Apex Court on 10.02.2020, was not considered by the Trial Court properly.

5 The learned AGP, representing respondent No.1-State and learned Advocate appearing for the respondent No.2-original informant strongly opposed the application and submitted, that the contents of the First Information Report would disclose, that the present appellants, who are Maratha by caste, had the knowledge, that the informant and her family members are Mang by caste, which is a Scheduled Caste. In spite of the knowledge, that they are the members of Scheduled Caste; yet, on the day of incident the present appellants had assaulted sons of the informant. The entire contents of the FIR definitely disclosed the ingredients of the offence under the Atrocities Act, and therefore, the learned Special judge has taken a correct view, that the application for pre arrest bail was barred under Section 18 of the Act.

6 At the outset, it is required to be put on record, that the learned Special Judge has absolutely not considered the allegations in the FIR properly and a very cryptic order has been passed without application of mind.

7 The First Information Report, that has been, lodged by the present respondent No.2 would show, that the incident had taken place on 07.06.2020, however, the FIR had lodged on 13.06.2020, which is apparently belated. It was stated, that the informant resides with her husband and children. They own a shop of selling coconut and sons do labour work. They know the accused persons and accused persons know that the informant and her family members are the members of the Scheduled Castes. Informant's son is the owner of one 407 Tempo, which he gives on hire. Accused Tukaram More used to hire the said tempo, and therefore, the informant knows Tukaram and his companions. Informant, her husband and daughter-in-law were sitting by the side of road at about 6.00 p.m. on 07.06.2020. Accused Balu Shivaji Gadekar came in Scorpio vehicle and gave cut to the husband of informant (he drove the vehicle rashly). Therefore, the husband of the informant asked Balu Gadekar that he should drive the vehicle properly and on that Balu Gadekar abused, "मांगटयानो तुम्हाला गावात रहायचं का". He was abusing and at that time the daughter-in-law of the informant has tried to persuade but she was also abused by the Balu Gadekar. Balu Gadekar then left in the said vehicle. Thereafter the informant's sons came back to home. Both the sons and informant (three in person) went to Ramdoh at about 7.00 p.m., where they met all the four accused persons and the informant and sons started asking about the quarrel. At that time, Balu Gadekar assaulted

by wooden log and other assaulted by kicks and fist blows and stone to both the sons. Thus, it is to be noted, that the present appellants were not even present when the alleged abuse in the name of caste was given by Balu Gadekar to the husband of the informant. That place was different and it was in front of the house of the informant. Where is the second incident ? Where are the allegations against the present appellants ? It is stated, that it is taken place at Ramdoh. There is absolutely no statement, that even at Ramdoh these appellants had uttered something in the name of caste or would amount to insult in the name of caste. At this stage itself, the submissions by the learned Advocate for the respondent No.2 are required to be considered. According to him, immediately after the incident the informant had gone to lodge the report. However, it was not taken by police. Therefore, on 10.06.2020 she had sent a written complaint to District Superintendent of Police, which was very much in detail and she had given act of each of the accused, which would disclose the offence under the Atrocities Act against the present appellants also. When this written complaint was sent to Police Station, the First Information Report has been recorded, however, all the contents of that written complaint have not been considered as FIR. In fact, the story is different and the police are unnecessarily protecting the appellants. There is every possibility of tampering with the evidence by pressurizing the informant, since they are

resident of the same vicinity.

8 It is to be noted, that the said complaint application dated 10.06.2020, at this stage, cannot be considered as FIR. As the FIR, on which even the informant has put her thumb mark or signature, has been treated as FIR as contemplated under Section 154 of the Code of Criminal procedure by police, the appellants could have refused to put her thumb mark on the said FIR, which is now taken by the police. At this stage, her contention, that since she is illiterate could not explain, on which document the police were taking thumb mark; is not available to her. It would be at the time of trial that she/prosecution will have to show, that which can be said to be the proper FIR and the complaint application dated 10.06.2020 should be treated as FIR under Section 154 of Cr.P.C.. At this stage, we will have to constrain ourselves to the FIR dated 13.06.2020. Taking into consideration the contents therein, those all allegations revealed only offence under Section 323 against the present appellants, and therefore, there is no question of bar to their application for pre arrest bail under Section 18 of the Atrocities Act. The learned Special Judge ought to have seen, as to whether prima facie case has been made against a particular accused under the Atrocities Act, then only question of bar to his application for pre arrest bail would come, when all these facts have not been considered. At the costs of repetition it will have

to be said, that there is total non application of mind by the concerned Special Judge. Time and again, this Court is insisting, that the learned Special Judges under the Atrocities Act should follow the law laid down in **Prithviraj Chavan** and other decisions by this Court while dealing with the applications for pre arrest bail, wherein offence under Atrocities Act is involved.

9 For the aforesaid reasons, following order is passed.

ORDER

1 Appeal stands allowed, which is preferred by appellant Nos.2 and 3.

2 The order passed by learned Special Judge/Additional Sessions Judge, Newasa-Ahmednagar in Bail Application No.220/2020 dated 29.06.2020, is hereby set aside.

3 Said application stands allowed.

4 In the event of arrest of the appellant No.2) Ajay Namdev Gore and No.3 Vijay Nanasaheb Borude, in connection with Crime No.335/2020 by Newasa Police Station for the offence punishable under Section 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section

3(1)(r)(s) and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they be released on P.R. and S.B. of Rs.15,000/- each.

5 The appellants shall not indulge in any criminal activity.

6 They shall not tamper with the evidence of prosecution in any manner.

(Smt. Vibha Kankanwadi, J.)

agd