

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

908 CRIMINAL APPEAL NO.407 OF 2020.

- 1) Sada @ Sadashiv Dattatriya Khendke,
Age 24 years, Occupation Agril.,
- 2) Gorakh Dattatriya Khendke,
Age 23 years, Occupation Agril.,
R/o Mandavgan Tq. Shrigonda
Dist. Ahmednagar.

...Appellants
(Original Accused)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Police Station, Shrigonda,
Tq. Shrigonda Dist. Ahmednagar.
- 2) The Superintendent of Police,
Ahmednagar.
- 3) Bhausahab Balu Jadhav,
Age 20 years, Occupation Education,
R/o Banpimpri Tq. Shrigonda
Dist. Ahmednagar.

...Respondents.
(Respondent No.3 is original complainant)

.....

Advocate for Appellants : Mr. V. P. Narwade

APP for Respondents No.1 and 2-State : Mr. S. W. Munde.

Advocate for Respondent No.3:Mr.R.N.Chauhan(Appointed)

.....

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 04-09-2020.

JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, the appeal is admitted.
3. By consent, the appeal is taken up for final disposal.
4. Present appeal has been filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity), to challenge the order regarding rejection of anticipatory bail in Criminal (Bail) Misc.Application No.345 of 2020, by learned Additional Sessions Judge, Shrigonda Dist. Ahmednagar on 19-06-2020.
5. Heard learned Advocate Mr. V. P. Narwade for appellants, Learned Additional Public Prosecutor Mr. S. W. Munde for respondents No.1 and 2 -State, and learned Advocate (Appointed) Mr. R. N. Chauhan for respondent No.3 – original informant.
6. The learned advocate appearing for the appellants vehemently submitted that, perusal of the First Information Report would show that, the alleged utterance in the name of caste was by co-accused

Balu Khendke and not by the present appellants and, therefore, the learned Special Judge went wrong in holding that the application for pre-arrest bail filed by the present appellants was barred under Section 18 of the Atrocities Act. He further submitted that, custody of the present appellants is not required. The FIR was the outcome of the rivalry. Present appellant No.1 had filed FIR i. e. Crime No.485 of 2020 on 24-05-2020 for the offences punishable under Section 327, 324, 363, 143, 147, 149, 323, 504, 506 of the Indian Penal Code against the relatives of the informant and, therefore, the present appellants have been tried to be implicated by the respondent No.2 in this case.

7. Per contra, the learned Additional Public Prosecutor as well as the learned Advocate appointed to represent the cause of respondent No.2 vehemently submitted that, there was common intention of the present appellants with the accused who is not before the Court. The present appellants had the knowledge about the caste of the informant. Further it is specifically alleged that, the appellant No.1 has used iron rod/ pipe to cause injuries to the informant and, therefore, recovery of the said weapon is necessary. On these grounds the physical custody of the appellants is required

and, therefore, learned Special Judge was justified in rejecting the application for pre-arrest bail.

8. At the outset, it is to be noted that, in view of the law laid down in *Prithviraj Chavan v. Union of India, Writ Petition No.1015 of 2018, decided by Hon'ble Apex Court on 10-02-2020*, the contents of the FIR are required to be considered as to whether it attracts bar under Section 18 of the Atrocities Act when the offence under Atrocities Act is involved in any crime. The contents of the FIR which has been lodged by the present respondent No.2 would show that, the alleged utterance in the name of caste was by co-accused Balu Khendke. *Prima facie* it can be opined that, though the contents show that, present appellants had come along with said Balu Khendke, and it is also stated that, the appellant No.1 was armed, yet as regards utterance of the abuse or insult is concerned, we cannot attribute common intention unless evidence is led otherwise. There is no allegation in the FIR that, present appellants had in any manner insulted the informant in the name of caste. Further it has been submitted that, police have added Section 363 of the Indian Penal Code later on on the basis of contents of the FIR. It is to be noted that, the informant is age 20 and if we consider the definition of Section 359 of Indian

Penal Code, then it gives that there would be only two kinds of kidnapping, one is kidnapping of a minor and another is kidnapping out of India. Here both the ingredients are not attracted when the informant is major. Therefore, there is no question of Section 363 of Indian Penal Code involved in the matter.

9. As regards the recovery of the weapon is concerned, it is to be noted that, as per the contents of the FIR and also the arguments it appear that, though iron rod has been used it could have caused simple hurt and, therefore, Section 324 of Indian Penal Code has been involved. In such circumstance, the recovery part of the weapon is concerned, that can be achieved by giving attendance to the present appellants to the police station thereby making them available for investigation. Under such circumstance, it can be observed that, the learned special Judge failed in considering the contents of the FIR and arriving at a wrong conclusion that the application for pre-arrest bail was barred under Section 18 of the Atrocities Act.

10. It appears that, two crimes are registered against appellant No.1, one is Crime No.179 of 2017 for the offences punishable under Section 395, 323, 504, 506 of Indian Penal Code and another is

Crime No.671 of 2018 for the offence punishable under Section 354 of Indian Penal Code. Though this fact regarding criminal antecedents would have been normally taken into consideration, yet as regards present case is concerned, we cannot brush aside the fact that on 24-05-2020 Crime No.485 of 2020 was lodged by the present appellant No.1 against the relative of the informant. Therefore, the stand of false implication, that has been taken by the appellant, will have to be considered and, therefore, though those criminal antecedents have been stated, yet it will not debar the appellant No.1 from seeking pre-arrest bail. The impugned order, therefore, deserves to be set aside. Hence, following order.

ORDER

- 1) Appeal stands allowed.
- 2) The order passed by learned Additional Sessions Judge / Special Judge, Shrigonda Dist. Ahmednagar in Criminal (Bail) Misc. Application No.345 of 2020 is hereby set aside. The said application stands allowed.
- 3) In the event of arrest of the appellants in connection with Crime No.530 of 2020, dated 08-06-2020, for the offences punishable under Section 324, 323, 504, 506 read with 34 of the Indian Penal Code and

under Section 3 (1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, they be released on P.R. of Rs.30,000/- (in words rupees thirty thousand only) with two sureties of Rs.15,000/- each (in words rupees fifteen thousand only).

- 4) The appellants shall not commit any offence.
- 5) The appellants should remain present before the Investigating Officer on every Monday, Wednesday and Friday between 10.00 a.m. to 02.00 p.m., till filing of charge-sheet.
- 6) They should co-operate with the investigation.
- 7) They shall not try to pressurize witnesses in any manner.
- 8) Fees of the appointed advocate is quantified at Rs.5000/- (in words rupees five thousand only), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.