

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

CRIMINAL APPEAL NO.414 OF 2020

Bhatulal s/o Durgadin Jaiswal
Age: 65 Yrs., occu. Business,
R/o Mahasdi-Fata, Ner,
Tq. and Dist. Dhule. = **APPELLANT**

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Dhule Tq. Police Station,
Tq. And Dist. Dhule.
2. Chetan Adhar Ahire
Age: 33 Yrs., occu. Agril.
R/o Mahadeo Mandir Chowk,
Nandre, Tq. And Dist. Dhule = **RESPONDENT/S**

Mr. NN Desale, Advocate for Appellant;
Mr. SB Pulkundwar, APP for Respondent No.1-State;
Mr. VP Raje, Advocate for Respondent No.2.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 24th September, 2020.

ORAL JUDGMENT:-

1. Heard learned Advocates appearing for the
respective parties.

2. Admit. Learned Advocates waive service
for respective respondents. With consent of the
parties, taken up for final disposal.

3. Present appeal has been filed under Section 14-A of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the Atrocities Act) to challenge order dated 2.7.2020 passed by learned Additional Sessions Judge/Special Judge, Dhule in Criminal Bail Application No.290/2020, wherein, pre-arrest bail application moved by the present appellant came to be rejected. The present appellant is apprehending his arrest in connection with CR No. 98/2020 registered with Dhule Taluka Police Station, Tq. And Dist. Dhule for the offences punishable under Sections 394, 323, 504, 506 read with 34 of IPC and under Sections 3(1)(r)(s) of the Atrocities Act.

4. It has been vehemently submitted on behalf of the appellant that the learned Special Judge has not considered the contents of the FIR in proper perspective. He did not see that there were in all three accused persons arrayed in the FIR and the abuses in the name of caste are allegedly given by Golu Bhatu Jaiswal and not by the present appellant. The role attributed to present

appellant, who is father of said Golu, is that said Golu had called other two accused persons, including the appellant, after there was dispute and abused by said Golu in the name of caste to the informant. After the present appellant and his son Shubham arrived, it is alleged that, they had abused the informant and his friends assaulted them by fists and kick blows. Thereafter, present appellant is stated to have forcibly taken out 5 gram gold ring of the informant. There was no question of bar under Section 18A(2) of the Atrocities Act for entertaining the pre-arrest bail application by the present appellant and it is not alleged in the FIR against him that he has abused the informant in the name of caste. Further, the learned Special Judge failed to see that said Shubham had lodged a report against the informant and other persons on 13.3.2020, vide CR No. 133/2020 for the offences punishable under Sections 395, 323, 504 and 506 of IPC. The impugned FIR is nothing but counter-blast to the FIR lodged by Shubham and, therefore, when the action on the part of the informant is tainted, liberty of the appellant ought not to have been curtailed.

5. Per contra, learned APP as well as learned Advocate for Respondent No.2, strongly opposed the appeal and supported the reasons given by the learned Special Judge. It has been submitted by them that statements of the witnesses support the contents of the FIR, wherein it is specifically stated that there were abuses in the name of caste. It is further submitted that the pre-arrest bail application was not maintainable in view of bar under the Atrocities Act.

6. At the outset, it is repeatedly stated by the Hon'ble Supreme Court as well as this Court that role of each and every accused is required to be seen while dealing with either bail application or even at the final stage.

. Now, as regards the present appellant-accused is concerned, without going into facts of the case, it appears that the learned Special Judge has rejected the bail application only on the ground that the offence under the Atrocities Act is transpired as well as the present appellant has been booked under common intention. However, taking into consideration a proper look at the FIR,

it can be seen that, when the alleged abuses in the name of caste were uttered by Golu, at that time, present appellant was absolutely not present. Therefore, there was no question of invoking Section 34 of IPC for the offence under the Atrocities Act. The position of law is very clear. As regards the abuses are concerned, it cannot be with common intention. It is specifically stated in the FIR that after Golu had uttered those abuses when the informant was giving advice to him, Golu had called brother Shubham and father Bhatu, i.e. present appellant. At this stage, there is no material on record to see as to from which place Shubham and Bhatu were called. The incident is stated to have taken place around 8.00 to 8.30 pm on 12.3.2020 in Shubham Beer Bar, situated at Mhasadi Phata, Ner, Tq. And Dist.Dhule. The informant does not say as to within how much time Shubham and Bhatu arrived at the spot, but then says that after they had arrived, they started abusing the informant and his friends. While describing it, the informant does not say that Shubham and Bhatu had also abused him in the name of caste. Therefore, at the most, that would

attract an offence under Section 504 of IPC. Thereafter, it is stated that Shubham and Bhatu assaulted by fists and kick blows. That means, it attracts offence under Section 323 of IPC. Further, as regards the present appellant is concerned, it is stated that he forcibly took out 5 gram gold ring from finger of right hand of the informant. Therefore, the Police have invoked Section 394 of IPC.

. An interesting point to be noted is that, in spite of this entire incident, in the FIR itself the informant says that he did not lodge a complaint with Police and went home. In the FIR, he has further stated about the incident, which had again taken place in the same Beer Bar at about 9.00 am on 13.3.2020. Suffice it to say that he has tried to connect the second incident with first one. Since we are considering the contents of the FIR for the purpose of pre-arrest bail, certain doubts are there, however, it would not be appropriate stage to mention those doubts when the investigation is still pending.

7. Another fact that is required to be noted

is that the offence, that has been registered on the basis of the FIR lodged by Shubham, pursuant to which the present informant and others have been booked, that FIR is prior in time and, therefore, while dealing with the present bail application, the intention is also required to be considered as to what prompted the informant to lodge the FIR belatedly. There was absolutely no bar under Section 18A(2) of the Atrocities Act as those words were not uttered and the offence cannot be said to be made out against the present appellant.

8. The ratio laid down in the decision of Prathvi Raj Chauhan Vs. Union Of India -(Writ Petition No.1015/2018 decided on 10 February, 2020), which runs as follows, is definitely required to be considered.

“10. 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.

The said ratio has not been considered by the learned Special Judge. The pronouncements relied upon by learned Advocate for the appellant, have not at all been taken into consideration by the learned Special Judge and a cryptic order has been passed, which cannot be allowed to be sustained. Hence, following order,-

ORDER

i. The Criminal Appeal stands allowed;

ii. The order dated 2.7.2020 passed by learned Additional Sessions Judge/Special Judge, Dhule in Criminal Bail Application No.290/2020, is hereby set aside. The said application stands allowed.

iii. In the event of arrest of the appellant in connection with CR No.98/2020 registered with Dhule Taluka Police Station, Tq. And Dist. Dhule for the offences punishable under Sections 394, 323, 504, 506 read with 34 of IPC and under Sections 3(1)(r)(s) of the Atrocities Act, the appellant be released on PR and SB of Rs.15,000/- each.

iv. The appellant shall not tamper

with evidence of the prosecution in any manner and shall not indulge in any criminal activity. The appellant should co-operate with the investigation and remain present before the I.O. as and when called.

v. It is clarified that whatever observations made by this Court herein 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.

(SMT. VIBHA KANKANWADI,J.)

BDV