

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.426 OF 2020

- 1) Rajendra s/o Natthu Sonar,
Age 54 years, Occupation Labour,
- 2) Arunabai @ Chotibai w/o Rajendra Sonar,
Age 44 years, Occupation Household,
- 3) Pooja w/o Yogesh Sonar,
Age 25 years, Occupation Household,

All are R/o Thalner Tq. Shirpur
District Dhule.

.....Appellants.

VERSUS

- 1) The State of Maharashtra,
Through Thalner Police Station,
Tq. Shirpur Dist. Dhule.
- 2) Ushabai w/o Himmat Deore,
Age 55 years, Occupation Household,
R/o Thalner Tq. Shirur District
Dhule.

.....Respondents.

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Advocate for Appellants : Mr. D. A. Mane.
APP for Respondent No.1-State : Mr. S. W. Munde.
Advocate for Respondent No.2 : Mr. R. M. Gaikwad
(Appointed)
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 09-09-2020.

JUDGMENT :

1. Present appeal has been filed under Section 14-A of the
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

Act, 1989 with Section 438 of Code of Criminal Procedure in order to challenge Judgment and order dated 27-07-2020, by learned Additional Sessions Judge, Dhule in Criminal Bail application No.484 of 2020, by which the bail application under Section 438 of the Code of Criminal procedure filed by the present appellants came to be rejected. The appellants are apprehending their arrest in Crime No.36 of 2020 dated 19-05-2020, registered with Thalner Police Station Dist. Dhule for the offences punishable under Section 307, 143, 147, 148, 149, 509, 323, 324, 504, 506, 427 of Indian Penal Code and Section 3 (1) (r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. **Admit.**

3. Heard learned Advocate Mr. D. A. Mane for the appellants, learned Additional Public Prosecutor Mr. S. W. Munde for respondent No.1 – State. Though respondent No.2 was duly served, she did not appear and, therefore, the advocate Mr. R. M. Gaikwad was appointed by this Court as *Amicus Curiae* to represent the cause of respondent No.2.

4. It has been vehemently submitted on behalf of the appellants

that, perusal of the FIR would show that, offence under the Atrocities Act was not made out against the present appellants. The appellants were not present since beginning at the spot but FIR states that they had come later, and it is stated that, along with other accused persons, the present appellants also abused the informant by saying, "आम्हाला साले धेडगे मातुन गेले." It is stated that, the present appellants along with other accused persons had assaulted the informant by fist and kick blows, therefore when the act alleged to have been committed by the present appellants, is not attracting the provisions of Atrocities Act. Then the learned Special Judge ought not to have brushed it aside by saying that, the application itself was barred under Section 18 of the said Act.

5. The physical custody of the appellants is not required. Furthermore even the charge-sheet is filed now before the learned special Judge. The appellants would co-operate with the investigation. The contents of the FIR would disclose that, there used to be dispute between informant and his family members with the accused persons since long and, therefore, possibility of false implication of the appellants cannot be ruled out. They deserve for pre-arrest bail.

6. Per contra, the learned Additional Public Prosecutor and learned appointed Advocate strongly opposed the appeal by saying that, the contents of the FIR are making out the case under the Atrocities Act. The abuses uttered by the present appellants were considered by the learned Trial Judge. Further though it is stated that, some other accused persons have been involved, who had uttered abuses in the name of caste to the informant, yet those persons were arrested by police and now they are on bail. Learned Special Judge ought to have allowed the application.

7. At the outset, it can be seen that, the learned Special Judge has not appreciated the material on record, especially the contents of the FIR. A cryptic order has been passed. The reasons for rejecting the application could be found in paragraph No.10 only and the earlier part is consumed for putting the case before the concerned Court and the submissions. If the First Information Report does not show any offence attracted under the Atrocities Act, then definitely there is no bar under Section 18 of the said Act to grant anticipatory bail. The ratio laid down in case of *Prithviraj Chavan v. Union of India*, Writ Petition No.1015 of 2018, decided by Hon'ble Apex Court on 10-02-2020, is definitely required to be borne in mind.

8. Perusal of the FIR would show that, when the informant and his daughter-in-law were proceeding towards answering nature's call at about 8.30 p.m. on 18-05-2020, at that time they were intercepted and there was altercation between them and accused Kailas Sonar and Amol Koli. It is not stated that, present appellants were also present at that time. It is rather stated that, after said Kailas and Amol were assaulting the informant and her daughter-in-law, voices were raised and the present appellants went to the place along with Amol Koli, Vishal Koli, Ajay Koli. Kailas and Amol were already present there on the spot, and all these persons started dispute with the informant and abused her in the name of caste. When we are considering the contents of the FIR, then it can be seen that, from those recitals from the FIR would disclose that, the abuses were given in chorus which cannot be a reality. However, as regards present appellant No.1 is concerned, it is specifically stated that, he had hit a wooden log on the head of Jitendra who is son of informant. Offence under Section 307 of Indian Penal Code is also invoked, therefore definitely the weapon that was used for causing injury does not inspire this Court to release him on anticipatory bail. The said wooden log is definitely required to be recovered and at this stage it can be observed from the contents of the FIR that,

appellant No.1 would be the appropriate person who could say about the place where the wooden log is kept. Therefore, when he had used wooden log on the head of the son of the informant and now for that purpose Section 307 of Indian Penal code has been invoked, case is not made out to grant any relief to appellant No.1.

9. Now as regards appellants No.2 and 3 are concerned, they are ladies and at the cost of repetition it can be said that, allegations against them are that they had abused the informant along with other accused persons in chorus regarding the caste of the informant. Further it is stated that, they have assaulted the informant and her daughter-in-law with fist and kick blows. Therefore, no question of recovery is involved as against the appellants No.2 and 3. The learned Special Judge ought to have seen all these aspects and would have allowed the application at least to the extent of appellants No.2 and 3. Now the impugned order, therefore, deserves to be set aside. Hence, following order.

ORDER

- 1) The appeal is hereby partly allowed in respect of appellants No.2 and 3.
- 2) Prayer regarding appellant No.1 to be released on anticipatory bail and setting aside the impugned order

passed by the learned Special Judge is concerned, it is rejected.

3) The order of rejection of the application in respect of present appellants No.2 and 3 in Criminal Bail Application No.484 of 2020, passed by learned Additional Sessions Judge, Dhule, dated 27-07-2020, is hereby set aside, it stands allowed in respect of appellants No.2 and 3.

4) In the event of arrest of appellants No.2 and 3, in Crime No.36 of 2020, dated 19-05-2020, for the offences punishable under Section 307, 324, 143, 147, 148, 149, 323, 504, 506, 509, 427 of the Indian Penal Code and Section 3 (1) (r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered with Thalner Police Tq. Shirpur Dist. Dhule, they be released on P.R. and S.B. of Rs.15,000/- each (in words rupees fifteen thousand only).

5) The appellants No.2 and 3 shall not commit any offence.

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/-.