

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 CRIMINAL APPEAL NO.445 OF 2020

- 1) Abdul Wajid Abdul Wahid,
Age 32 years, Occupation Service,
- 2) Sk. Abdul Rahemat Abdul Rashid,
Age 20 years, Occupation Labour,

Both R/o Pusegaon Tq.Sengaon
Dist. Hingoli.

...Appellants.

VERSUS

- 1) The State of Maharashtra,
Through Police Station Narsi,
Tq. And Dist. Hingoli.
- 2) Mahendra Devidas More,
Age 37 years, Occupation Private
Doctor,
R/o Paheni Tq. Dist. Hingoli.

...Respondents.

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Advocate for Appellants : Mr. S. K. Chavan.
APP for Respondent No.1-State : Mr. S.B.Pulkundwar
Advocate for Respondent No.2 : Ms.Sheetal V.Salunke.
(Appointed)
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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 Miscellaneous Application No.203 of 2020, by learned Additional Sessions Judge, Hingoli on 04-08-2020.

5. Heard learned Advocate Mr. S. K. Chavan for the appellants, learned Additional Public Prosecution Mr. S. B. Pulkundwar. Respondent No.2 is the original informant. He failed to appear even after due service of notice by the appellants and, therefore, Advocate Ms. Sheetal Salunke was appointed to represent the cause of respondent No.2.

6. It has been vehemently submitted on behalf of the appellants that, the FIR has been lodged with mala fide intention. It does not attract the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. There is delay of about one day in lodging the report and, therefore, possibility of afterthought imputations cannot be ruled out. The informant is a

medical practitioner and, therefore, the delay will have to be considered against him as he could have approach the police immediately. Further it has not been considered that, if the present appellants had the intention to raise dispute with the informant and abuse him in the name of caste then they could have abuse him when they had gone inside the dispensary of the informant. However, the informant has tried to paint a picture that the abuses have been given when after the informant closed his dispensary, came out and was talking with some other person, then he was abused in the name of caste. Learned Special Judge has wrongly considered that the application for pre-arrest bail was barred under Section 18 of the Atrocities Act. In fact no such detailed order has been given. He, therefore, prayed for allowing the appeal.

7. Per contra, the learned Additional Public Prosecutor as well as learned appointed advocate strongly opposed the application. It was submitted that, the first incident had taken place at about 1.30 p.m. on 19-07-2020 when the informant was sitting in the dispensary which he is carrying out from house of one Amjat Kha Hamit Kha. It is stated that, in all four persons including the present appellants entered the dispensary, disputed with the informant and, thereafter,

the informant closed the dispensary and when he was talking in front of his dispensary with two persons, at that time the present appellants went near him and abused him in the name of caste. The other two persons had assaulted him by fist and kick blows. The statements of the witnesses recorded uptill now support the FIR. When *prima facie* case has been made out against the present appellants, the learned Sessions Judge was justified in rejecting the application filed by them for pre-arrest bail as it was barred under Section 18-A of the Atrocities Act.

8. In view of *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 in order to know whether *prima facie* case has been made out to attract the Atrocities Act. If the offence of Atrocities Act is made out, then the application for pre-arrest bail would be barred under Section 18 of the said Act. Here as per the informant, the incident has taken place at two places. The first incident has taken place inside the dispensary. It is stated that, in all four persons including the present appellants had gone inside the dispensary. They started disputing as to why the informant is making a news that amount towards treatment given by him to the

appellants are due from them. After the informant had told the accused persons that, they should not abuse and should not come in the dispensary, so also they are not required to pay the amount, he closed the dispensary. It is his say that, when he was talking to one Mohammod Ayub Mohammod Tamboli and Siddhodhan Ganpat Dhabe at that time the present appellants went near him, they were knowing the caste of the informant and then uttered, "महा-या, धेडग्या तुझे कशाचे पैसे आमच्याकडे आहेत, तु उगाच गावभर पैसे असल्याबाबत गावभर का बदनामी करत आहेस व तु गावात दवाखाना का चालवतोस तेच आम्ही पाहतो."

9. At the outset, from these contents of the FIR, it can be *prima facie* said that the abuses cannot be in chorus. Further, if the appellants had the intention to abuse the informant in the name of caste, then there was a chance for them to give those abuses when they were inside the dispensary. That incident had taken place at the first place, but then as per the FIR, the appellants had abused him but he has not given which abuses were given when the informant was inside the dispensary. Further, the role attributed to other two persons is that, they had assaulted him by fist and kick blows. There is substance in the submission on behalf of the appellants that, as the informant is an educated person, definitely

there was no hurdle for him to approach the police immediately. But then he says that, as there was heavy rain and his mental condition was not proper, he did not approach the police immediately. In fact, the FIR makes it clear that, he had gone to police station on 19-07-2020, and after taking Yadi or reference letter from police station, he has got himself medically checked from Civil Hospital, Hingoli. There was no hurdle for him to lodge the FIR when he was in police station, so also there was no hurdle for the police to take his FIR at that point of time. From the contents of the FIR it can be gathered that, he would have received at the most simple injuries and there was no necessity that he should have been rushed to the hospital immediately. Therefore, taking into consideration the said delay, there appear to be some substance in the submission on behalf of the appellants that, there is possibility of concoction. When the FIR is tainted then definitely personal liberty cannot be curtailed. There was no bar under Section 18 of the Atrocities Act for entertaining the pre-arrest bail application of the present appellants as the imputations in the name of caste cannot be in chorus. Case is therefore made out to grant anticipatory. The learned Special Judge has not taken a proper approach and, therefore, the impugned order deserves to be set aside. Hence, the following order.

ORDER

- 1) Appeal stands allowed.
- 2) The order passed by learned Additional Sessions Judge-1, Hingoli in Criminal Miscellaneous Application No.203 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.52 of 2020, dated 20-07-2020, for the offences punishable under Section 323, 506 read with 34 of the Indian Penal Code and under Section 3 (1)(r)(s), 3(2)(va) 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/-.