

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

CRIMINAL APPEAL NO.452 OF 2020

Yamunabai w/o Kundlik Suryawanshi,
Age: 25 years, Occu.: Household,
R/o. Kinhola, Tq. & Dist. Parbhani

... Appellant

Versus

1. The State of Maharashtra
Through Police Station,
Parbhani (Rural), Dist. Parbhani.

2. Dnyanoba Bapurao Tupsamindre
Age: 58 years, Occu.: Labour,
R/o. Kinhola, Tq. & Dist. Parbhani.

... Respondents

.....
Mr. S. J. Salunke, Advocate for appellant.
Mr. S.W. Munde, APP for respondent No.1-State.
Mr. D. G. Kamble and Mr. S. D. Kamble, Advocate for Respondent No.2 (Absent).
Ms. Sheetal Salunke, Advocated (appointed) for respondent No.2.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 15th September, 2020

PRONOUNCED ON : 24th September, 2020

JUDGMENT :

. **Admit.**

2. Present appeal has been filed under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter

referred to as the 'Atrocities Act') to challenge the order passed by the learned Additional Sessions Judge / Special Judge, Parbhani in Criminal Miscellaneous (Bail) Application No.645 of 2020 dated 07-08-2020. The present appellant is apprehending her arrest in Crime No.154 of 2020 dated 27-07-2020 registered with Parbhani (Rural) Police Station for the offences punishable under Sections 324, 323, 504, 34 of Indian Penal Code and under Section 3(2)(va) of the Atrocities Act. She had approached the Special Judge for pre-arrest bail under Section 438 of the Code of Criminal Procedure, however, the said application has been rejected. Present respondent No.2 has lodged the First Information Report.

3. Heard learned Advocate Mr. S. J. Salunke for appellant, learned APP Mr. S. W. Munde for respondent No.1-State and learned Advocate Ms. Sheetal Salunke for respondent No.2 (appointed).

4. It will not be out of place to mention here that when the matter was on board on 03-09-2020, at that time, respondent No.2 – informant had not appeared, though served. Under such circumstance, this Court had appointed Ms. Sheetal Salunke to represent the cause of respondent No.2. But, thereafter, learned Advocate Mr. S. D. Kamble filed his Vakalatnama on behalf of respondent No.2, however, he was absent when the matter was finally heard on 15-09-2020 and therefore, submissions on behalf of appointed Advocate have been heard for respondent No.2.

5. It has been vehemently submitted on behalf of the appellant that perusal of FIR would show that informant was not present when the alleged incident had taken place at about 3.00 p.m. on 26-07-2020. It is stated that there was quarrel between the present appellant and the daughters of the informant. But thereafter it is stated in the FIR that informant was informed about the incident, so also, after the return of the wife of the informant, at that time, again the present appellant went in the courtyard of the informant and started abusing them. When the informant was trying to advise the appellant, the appellant's husband and one Gaju Shankar Kharwade went there and they had assaulted the wife of the informant by stick on her head. It had resulted bleeding injury to the wife of the informant. Gaju had then assaulted informant on his right hand by stick resulting in covert injury. Present appellant had caused covert injury to the daughter of the informant. After hearing the voice, people gathered and separated them. All these recitals would show that there was no abuses in the name of caste. It is only stated in the FIR that since the informant and his family members are the members of Scheduled Caste, they have been assaulted. The FIR itself contends that the incident had triggered due to the dispute between small children and under such circumstance, it could not have been the intention that only because the informant belongs to a particular caste, he and his family members would have been assaulted. Offence under Section 3(2)(va) of the Atrocities Act is not made out and therefore, there was no question of bar under Section 18 of

the said Act for entertaining a pre-arrest bail. The learned Special Judge has not taken into consideration all these aspects and even not considered the ratio laid down in *Prathvi Raj Chauhan Vs. Union of India and others [WP (C) No.1015 of 2018]* delivered by Hon'ble Supreme Court on 10-02-2020. As regards the present appellant is concerned, at the most, the offences under Indian Penal Code would be under Sections 323 and 504 of Indian Penal Code, which are bailable. Further, the husband of the present appellant and said Gaju were arrested and they have been released on regular bail by the learned Special Judge. Under such circumstance, the physical custody of the appellant is not at all required for the purpose of investigation. He prayed for allowing the appeal.

6. Per contra, the learned APP as well as the learned (appointed) Advocate for respondent No.2 strongly opposed the application and submitted that both the parties are from same village and neighbors and therefore, it can be presumed that the appellant had every knowledge about the caste of the informant. Though the specific abuses in the name of caste have not been stated in the FIR, yet, it is specifically mentioned that as he is from the particular caste, he and his family members have been assaulted. *Prima facie* the offence under Section 3(2)(va) of the Atrocities Act has been made out and therefore, the learned Special Judge was right in rejecting the application.

7. Here, in this case, perusal of the FIR would show that the allegations have not been made that the present appellant had abused either to the informant or his family members in the name of caste. The police have not invoked the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act, but they have registered the offence punishable under Section 3(2)(va) of the Atrocities Act. There is only one sentence in the FIR stating that “मी बौध्द जातीचा असल्याचे माहीत असतांनाही त्यांनी आम्हाला मारहाण केलेली आहे”. This sentence is then required to be considered from the other contents of the FIR. There appears to be an incident at about 3.00 p.m. Daughters of the informant were at home. Son, wife and informant himself were not at home, but then there was quarrel between the present appellant and both the daughters of the informant. It was resolved at that time by the mother-in-law of the present appellant and others. The informant further says that when his wife returned at about 6.00 p.m., their daughter was informing the said incident to the wife of the informant and it appears that he was also present at that place. When the said narration was going on, at that time, the accused appeared in the courtyard of the informant and it is stated that she was unnecessarily abusing them. Informant was inside the house, but thereafter came out and started giving advise to the appellant, but then, at that time, the husband of the present appellant and one Gaju Shankar Kharwade came, who then had assaulted the wife of the informant resulting in bleeding injury to her head. As regards the role attributed to the present appellant is concerned, it is stated that

she had assaulted Swati – daughter of the informant and it had resulted in covert injury. Thus, the perusal of the fact narrated would show that, at the most, the offence that would be transpired against the present appellant would be under Section 323 and 504 of Indian Penal Code. Now, as regards Section 3(2)(va) of the Atrocities Act is concerned, it can be seen that the said provision came to be inserted by Act of 1 of 2016, which came into effect from 31-12-2015. A Schedule has been attached which specifies the offence under Indian Penal Code and it is provided that if any offence specified in the Schedule is committed against a person or property of member of a Scheduled Caste or Scheduled Tribe, then it is punishable as specified for such offence under Indian Penal Code and also with fine. Prior to the insertion of Section 3(2)(va) there was Section 3(2)(v) under the Atrocities Act, which reads thus :-

“Section 3(2).....

(v) : Commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;”

Now, by keeping the said provision as it is, Section 3(2)(va) has been added, which runs as follows :-

“Section 3(2).....

(va) Commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.”

8. Thus, it can be seen that earlier the offences, which were covered under Section 3(2)(v), were restricted to those offences under Indian Penal Code which were punishable with imprisonment for a term of 10 years or more only, but in order to cover the other offences which are prescribing punishment even below 10 years, the present Section 3(2)(va) has been inserted in the Atrocities Act, but the requirements would be the same in order to prove the offence in both the Sections. *Sine qua non* for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Caste or Scheduled Tribe. Reliance can be placed on ***Masumsha Hasanasha Musalman Vs. State of Maharashtra, [(2000) 3 SCC 557]***, wherein it has been held :-

“... To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Indian Penal Code is committed against him on the

basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises....”

9. Similar ratio was laid down in ***Dinesh alias Buddha Vs. State of Rajasthan, [2006 (3) SCC 771]***. Further in ***Ramdas and others Vs. State of Maharashtra, [2007 (2) SCC 170]*** it has been observed by Hon’ble Apex Court that :-

“At the outset we may observe that there is no evidence whatsoever to prove the commission of offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The mere fact that the victim happened to be a girl belonging to a Scheduled Caste does not attract the provisions of the Act. Apart from the fact that the prosecutrix belongs to the Pardhi community, there is no other evidence on record to prove any offence under the said enactment. The High Court has also not noticed any evidence to support the charge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and was perhaps persuaded to affirm the conviction on the basis that the prosecutrix belongs to a Scheduled Caste community. The conviction of the appellants under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 must, therefore, be set aside.”

10. Though all the above said pronouncements are after taking into consideration evidence laid in the trial and in the present case we are at a very *prima facie* stage, yet, in order to see whether the application for pre-arrest bail is barred under Section 18 of the Atrocities Act in view of ***Prathvi Raj Chauhan (Supra)***, it will have to be seen as to whether *prima facie* offence has been made out or not from the contents of FIR. Perusal of the FIR would show that the dispute or quarrel that had taken place in the afternoon, was on account of the dispute between small children of the informant's daughter and the children of present appellant. It does not appear *prima facie* that the alleged assault, even if taken as it is, was for the reason that the informant and the family members are the members of Scheduled Caste. No abuses have been given in the name of caste and when it is stated that while the daughter of the informant was narrating the incident that had taken place in the afternoon, then again the present appellant started abusing the informant and the family members. Therefore, on the basis of the material presently with the investigating authorities, it can be *prima facie* said that offence under Section 3(2)(va) of the Atrocities Act has not been made out and therefore, there was no bar under Section 18 of the Atrocities Act for pre-arrest bail. The learned Special Judge went wrong in considering only the *prima facie* words and did not take into consideration the entire FIR with the ingredients/requirements of Section 3(2)(va) of the Atrocities Act. Again, at the cost of repetition, it can be said that the order that has been passed by the learned

Special Judge is cryptic and the entire facts narrated in the FIR have not been considered at all. Such order deserves to be set aside. The appeal, therefore, deserves to be allowed. This Court, by order dated 20-08-2020, had granted the interim protection that is required to be confirmed. It is stated that the present appellant has attended the police station, as it was one of the conditions and has cooperated in the investigation. Under such circumstance, that term/condition deserves to be cancelled now. Hence, the following order :-

ORDER

- I) Appeal is hereby allowed.
- II) The order passed by the learned Special Judge / Additional Sessions Judge, Parbhani in Criminal Miscellaneous Bail Application No.645 of 2020 dated 07-08-2020, is hereby set aside.
- III) The interim protection granted to the appellant by this Court vide order dated 20-08-2020 stands confirmed. In other words, in the event of arrest of appellant i.e. Yamunabai w/o Kundlik Suryawanshi in connection with Crime No.154 of 2020 dated 27-07-2020 registered with Parbhani (Rural) Police Station for the offences punishable under Sections 324, 323, 504, 34 of Indian Penal Code and under Section 3(2)(va) of the Atrocities Act, she be released on P. R. and S.B. of Rs.15,000/-, if not

already released.

IV) The appellant shall not indulge in any criminal activity.

V) She shall not tamper with the evidence of the prosecution in any manner.

VI) It is clarified that the learned Special Judge shall not get carried away by the observations made in this order by this Court, as they are purely for the purpose of consideration of bail application. The trial Court to come to its own conclusion at the end of trial as regards the merits of the case are concerned.

[SMT. VIBHA KANKANWADI, J.]

SCM