

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

CRIMINAL APPEAL NO.465 OF 2020

Shri Laxman s/o Ananda Patil
Age: 33 Yrs., occu. Agril.
R/o Javkheda, Tq. Shirpur,
District Dhule.

= **APPELLANT**

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Shirpur City Police Station,
Tq. Shirpur, Dist. Dhule.

2. Kalabai Vajir Bhil
Age: 45 Yrs., occu. Housewife,
R/o R/o Javkheda, Tq. Shirpur,
District Dhule.

= **RESPONDENTS**

Mr.NN Desale,Advocate for Appellant;

Ms.Vaishali Patil-Jadhav,APP for Resp.No.1-State;

Ms. Sheetal E.Waghmare, Adv. For Resp.No.2.;

Mr.Sohail S.Shaikh, Adv. (Appointed) for Resp.No.2.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 21st September, 2020.

ORAL JUDGMENT:-

1. Heard learned Advocate Shri MN Desale for appellant; learned APP Mrs. Vaishali Patil for Respondent No.1-State.

. It will not be out of place to mention here that on the last occasion when Respondent No.2 failed to appear, this Court had appointed Advocate

Sohail Shaikh to represent cause of Respondent No.2. Today, learned Advocate Ms. Shital Waghmare appeared and submitted that she has instructions to appear for Respondent No.2. Both of them have been allowed to make submissions on behalf of Respondent No.2.

2. Admit. Learned Advocate for the respective parties waive notice for respective respondents. Taken up for final disposal with consent of the parties.

3. Present appeal has been filed under Section 14-A of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the Atrocities Act) to challenge order dated 19.8.2020 passed by learned Special Judge/Additional Sessions Judge, Dhule in Criminal Bail Application No.605/2020, whereby the pre-arrest bail application of the appellant was rejected. The appellant is apprehending his arrest in connection with CR No.44/2020 registered with Shirpur City Police Station, Tq. Shirpur, District Dhule for the offences punishable under Sections

143, 147, 149, 294, 323, 354, 354-B, 504 and 506 of IPC and under Sections 3(1)(r)(s)(w)(i) of the Atrocities Act, which has been lodged at the instance of present appellant No.2-informant.

4. Learned Advocate appearing for the appellant vehemently submitted that the learned Special Judge failed to consider that *prima facie* offence, attracting the Atrocities Act, is not made out from the FIR. As regards the offences under IPC are concerned, physical custody of the appellant is not at all required. The informant is a Sarpanch of village Jawkheda, Tq.Shirpur, District Dhule. She has stated that one Sandip Suresh Patil and Prashant Jagannath Patil had encroached on the property owned by Grampanchayat, Jawkheda. Therefore, the Sarpanch had issued notices to such persons who had taken forcible possession of the land adjacent to commercial premises belonging to the Grampanchayat on 3.12.2019. The informant was informed on 5.12.2019 at about 9.30 am that said Sandip Patil and Prashant Patil have started making construction on the premises belonging to the Grampanchayat.

Therefore, the Sarpanch went to the spot and told that they should not carry out the construction. At that time, present appellant went there and started abusing the informant. Further, some more persons came and along with the earlier persons, they started abusing the informant. Samadhan, Sandip, Present appellant and Prashant Jagannath Patil uttered by saying that, - "तु कली भिल्टीन, नालटीन तुना कडून जे व्हई ते करी ले, तु आमन काही उपाडू शकत नई.". They had manhandled the informant and in that process, her blouse was torn and they have outraged modesty of the informant. All of them had threatened to kill her and pushed her on the site where the construction had commenced. She has, therefore, lodged the report against ten persons, which include the present appellant.

5. The learned Advocate for appellant further submitted that the alleged utterances in the name of caste are stated to have been hurled in chorus, which cannot take form of an offence and, therefore, the learned Special Judge ought to have released the appellant on pre-arrest bail.

6. Per contra, learned APP as well as learned Advocates representing cause of Respondent No.2, vehemently submitted that the encroachment is going on since many years and in order to curb the said encroachment, which has again began, the informant, in her capacity as Sarpanch, asked those persons not to carry out the construction, but she has been abused in the name of caste. Specific role has been attributed to the present appellant and the specific abuses have been quoted and, therefore, the learned Special Judge was justified in holding that *prima facie* offence has been made out under the Atrocities Act, creating bar under Section 18 of the Atrocities Act for entertaining an application for pre-arrest bail by the appellant-accused.

7. At the outset, it is to be noted that the informant is stated to be the Sarpanch since 2015. She has come with a case that, for the first time on 3.12.2019, she came to know that Sandip Patil and Prashant Patil were trying to encroach on the said property belonging to the Grampanchayat. Interesting part to be noted is that at one place

the informant is stating that the said property belongs to the Grampanchayat; but at another breath, she says that the said space was given to Ex-serviceman late Shaligram Dayaram Thakre (Patil) by Sainik Board and it is in possession of his widow Hirabai Shaligram Thakre(Patil). Thus, if the informant wants to say that, that space belongs to Hirabai Patil, then it was for that lady to take legal action. Further, the FIR is silent on the point as to how later on that land or open space came to the Grampanchayat. Now, as regards the offences under the IPC are concerned, most of them are bailable and those offences which are non-bailable, they do not require physical custody. Therefore, we will have to reconsider as to whether or not there was a bar under Section 18 of the Atrocities Act. The FIR says that four persons had abused in chorus, which according to the informant, are the abuses in the name of caste. The informant does not say that each one of them has given abuses in the name of caste differently, but some words have been put in mouth of those persons. Reliance can be placed on the decision in the case of Shashikant Ramhari Tambe and Ors. Vs. State of

Maharashtra – 2008 ALL MR(Cri.) 2132., wherein it has been clearly stated that the abuses cannot be in chorus and, therefore, as regards the appellant is concerned, it cannot be so attributed. Thus, even at this stage, it can be said that the FIR per se does not show prima facie offence under the Atrocities Act and, therefore, there was no bar under Section 18 of the said Act to entertain the application under Section 438 of Cr.P.C. The learned Special Judge failed to consider this aspect and, therefore, the impugned order deserves to be quashed and set aside by allowing the appeal. Hence, the following order,

ORDER

i. The Criminal Appeal is hereby allowed;

ii. The Order dated 19.8.2020 passed by learned Special Judge/Additional Sessions Judge, Dhule in Criminal Bail Application No.605/2020, is hereby quashed and set aside. The said bail application stands allowed.

iii. In the event of arrest of the appellant in connection with CR No.44/2020, registered with Shirpur City Police Station, Tq. Shirpur, District

Dhule, for the offences punishable under Sections 143, 147, 149, 294, 323, 354, 354-B, 504 and 506 of IPC and under Sections 3(1)(r)(s)(w)(i) of the Atrocities Act, he 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. He shall not indulge in any criminal activity and he should remain present before the Investigating Officer on every Monday between 10.00 AM to 12.00 PM till filing of charge sheet.

v. It is clarified that the observations made by this Court, as aforesaid, 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.

vi. Fees of the appointed Advocate Sohail Shaikh is quantified at Rs.5,000/- (Rupees five thousand) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI, J.)