

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.500 OF 2020

Sachin s/o Pundlik Pandhare

... Appellant

Versus

1. The State of Maharashtra
2. The Superintendent of Police, Nanded
3. Sagar s/o Shrirang More

... Respondents

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Mr. Sham B. Patil, Advocate for appellant.

Mr. A. M. Phule, APP for respondent Nos.1 and 2 – State.

Mr. Abhijit Thombre, Advocate for respondent No.3 (appointed).

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26-11-2020

ORDER :

. 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') challenging the order passed in Miscellaneous Criminal Application No.144 of 2020 dated 05-09-2020 by learned Additional Sessions Judge, Kandhar, Dist. Nanded, thereby rejecting the application filed by the present appellant under Section 438 of the Code of Criminal Procedure. The appellant is apprehending his arrest in connection with Crime No.334 of 2019 dated 05-12-2019 registered with Kandhar Police Station, Tq. Kandhar, Dist. Nanded for the offences punishable under Sections 341, 143,

147, 148, 323, 504 of Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Atrocities Act.

2. Heard learned Advocate Mr. Sham B. Patil for appellant, learned Advocate Mr. A. M. Phule for respondent – State and learned Advocate Mr. Abhijit Thombre for respondent No.3 (appointed).

3. It has been vehemently submitted on behalf of the appellant that perusal of the FIR would show that the name of the appellant is not reflected in the same and no specific role has been attributed to him. Co-accused has been granted bail by this Court in Criminal Appeal No.1 of 2020 on 17-03-2020.

4. Per contra, learned APP as well as learned Advocate, who is appointed to represent the cause of respondent No.3, submit that though in the FIR name of the present appellant is not reflected, yet, the supplementary statement of the informant would make it clear that due to inadvertence, informant gave the name of present appellant as Sachin Laxman Naik. He was in frightened condition at that time and, therefore, whatever acts are attributed to Sachin Laxman Naik are, in fact, against the present appellant. The appellant has used fiber pipe to commit the offence that is required to be recovered from him. So also, he was absconding since the date of the offence. In fact, the present appellant and other co-accused persons had attacked the informant and then paraded him on public road, tied him to the pole in a chowk and then

assaulted him. The manner in which the offence has been committed against the informant is serious. The informant is a member of Scheduled Caste and the present appellant had knowledge about the same. Therefore, no case is made out to release the appellant on anticipatory bail.

5. At the outset, in order to deal with an application for anticipatory bail under Section 438 of the Code of Criminal Procedure; in view of Section 18 of the Atrocities Act and the ratio laid down in ***Prathvi Raj Chauhan Vs. Union of India and others [WP (C) No.1015 of 2018] delivered on 10-02-2020***, it is required to be seen as to whether *prima facie* offence under the Atrocities Act has been made out or not against the present appellant. In order to come to that conclusion, we will have to read the FIR and also the police papers. In the FIR, name of the present appellant is not mentioned. One Sachin Laxman Naik is stated to be involved, however, now the police papers show that a supplementary statement has been given by the informant – respondent No.3, that due to inadvertence and frightened condition, he gave wrong name as Sachin Laxman Naik but in fact he is Sachin Pundlik Pandhare i.e. present appellant. It is to be noted that the FIR was lodged on 05-12-2019, whereas his supplementary statement was recorded on 08-07-2020, that is after a gap of about six months and then he is coming with the case that, in fact, a different person is involved and he had given the wrong name. However, at the same time, we are also required to consider the statements of other witnesses. Some witnesses have

been posed as eye witnesses. Parents of the informant who are stated to be the eye witnesses have stated that the person involved in the crime was Sachin Laxman Naik. Further, the statements of Kalyan Dhavale, Shivaji Yamalwad, Babita More also gives the name of one Sachin Laxman Naik. The supplementary statement of these witnesses have not been recorded. Therefore, as on today, the position remains that only informant is saying that Sachin Laxman Naik was not involved in the offence, but Sachin Pundlik Pandhare was involved. Under such circumstance, definitely offence under the Atrocities Act appears to be not made out against the present appellant. Further, the FIR shows that the alleged abuses or insult in the name of caste was attributed to accused Satish Gopal Sodnar. As regards Sachin Laxman Naik (even if considered as Sachin Pundlik Pandhare) is concerned, he assaulted the informant by fiber pipe. At the most, the offence under Section 323 of Indian Penal Code can be said to be attributed apart from the other IPC Sections, but in any way, offence under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act are not made out *prima facie* against the present appellant. Further, when co-accused is also released on bail by this Court, who is similarly situated, then definitely on the ground of parity also, the appellant deserves to be released on bail. Hence, the following order :-

ORDER

- I) Appeal stands allowed.
- II) The order passed by learned Additional Sessions Judge, Kandhar in

Miscellaneous Criminal Application No.144 of 2020 dated 05-09-2020, is hereby set aside. The said application stands allowed.

III) In the event of arrest of appellant - Sachin Pundlik Pandhare in connection with Crime No.334 of 2019 registered with Kandhar Police Station dated 05-12-2019 for the offences punishable under Sections 341, 143, 147, 148, 323, 504 of Indian Penal Code, Sections 3(1)(r) and 3(1)(s) of the Atrocities Act, he be released on P. R. & S. B. of Rs.15,000/- (Rupees Fifteen Thousand only).

IV) The appellant shall not tamper with the evidence of the prosecution in any manner.

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

VI) Fees of appointed Advocate is quantified at Rs.5,000/- to be paid by High Court Legal Services Authority, Sub Committee, Aurangabad.

[SMT. VIBHA KANKANWADI, J.]

scm