

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

CRIMINAL APPEAL NO.514 OF 2020

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| 1. | Vishnu s/o Anna Mungase | |
| 2. | Dipak s/o Vishnu Mungase | ... Appellants |

Versus

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| 1. | The State of Maharashtra | |
| 2. | Kishor s/o Ashok Sasane | ... Respondents |

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Mr. N.B. Narwade, Advocate for appellants.

Mr. A. M. Phule, APP for respondent No.1 – State.

Mr. Hemant Jaju, Advocate for respondent No.2 (appointed)

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th October, 2020

ORDER :

. Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act') to challenge the order of rejection of criminal bail application i.e. Criminal Miscellaneous Application No.289 of 2020 filed by the present appellants before the learned Additional Sessions Judge, Newasa, Dist. Ahmednagar which came to be rejected on 08-09-2020. The appellants are apprehending their arrest in connection with Crime No.580 of 2020 dated 15-08-2020 registered with Newasa Police Station, Dist. Ahmednagar for the offences punishable under Sections 323, 504 and 506 of Indian Penal Code and

Section 3(1)(r) and 3(1)(s) of the Atrocities Act.

2. Heard learned Advocate Mr. N. B. Narwade for appellants, learned APP Mr. A. M. Phule for respondent No.1 – State and learned Advocate Mr. Hemant Jaju (appointed) for respondent No.2.

3. It has been vehemently submitted that the learned Special Judge failed to consider that the allegations stated in the FIR are uttered by the appellants in chorus. Further, the FIR shows that there was dispute between present appellants and the informant on 03-08-2020, but he says that it was resolved and then he says that on 14-08-2020, at about 7.00 p.m., when he was along with his friends standing in front of hotel, at that time, the present appellants uttered the words. This appears to be a concocted story, when he himself is saying that the earlier dispute was resolved. Knowledge and intention are the main ingredients of Section 3(1)(r) and 3(1)(s) of the Atrocities Act, which are missing. There is false implication of the appellants. Learned Additional Sessions Judge failed to consider the aspects involved. Hence, the appeal deserves to be allowed.

4. Per contra, learned APP as well as learned Advocate (appointed) for respondent No.2 strongly opposed the appeal and submitted that the statements of witnesses recorded uptill now would corroborate the FIR and the place where the incident had occurred was a public place, where the appellants abused “मांगट्या तु

काहीच करु शकत नाही तु खुप माजला आहेत”. These are nothing but the insulting words and, therefore, *prima facie* offence under the Atrocities Act is made out against the appellants, which debars their pre-arrest bail application.

5. The first and the foremost fact that is required to be considered is that the allegations in the FIR shows that the abuses are in chorus. Reliance can be placed on the decision in ***Shashikant Ramhari Tambe & Others Vs. State of Maharashtra [2008 All MR (Cri.) 2132]*** wherein this Court has observed that the abuses cannot be in chorus. Another fact that is required to be noted is that in the FIR itself, it is stated that the earlier dispute dated 03-08-2020 was resolved by intervention of people from village, then the question arises what could have been the reason for any such incident on 14-08-2020. The element of intention appears to be missing as the *prima facie* impression has been created and, therefore, the conclusion drawn by the learned Additional Sessions Judge that there is bar under Section 18-A of the Atrocities Act appears to be wrong. Therefore, the appeal deserves to be allowed. Hence, the following order :-

ORDER

- I) Appeal stands allowed.
- II) The order passed by the learned Additional Sessions Judge, Newasa Dist. Ahmednagar in Miscellaneous Criminal Application No.289 of

2020 dated 08-09-2020, is hereby set aside.

III) The order passed by this Court on 29-09-2020 regarding interim protection stands confirmed. In other words, in the event of arrest of appellants – (1) Vishnu s/o Anna Mungase; and (2) Dipak Vishnu Mungase in connection with Crime No.580 of 2020 dated 15-08-2020 registered with Newasa Police Station, Dist. Ahmednagar for the offences punishable under Sections 323, 504 and 506 of Indian Penal Code and Sections 3(1)(r) and 3(2)(s) of the Atrocities Act, they be released on P. R. and S.B. of Rs.15,000/- each, if not already released.

IV) The conditions imposed earlier to remain as it is.

V) 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