

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.539 OF 2020

1 Kailas Himmatrao Padghan,
Age 38 Yrs., Occ. Business,

2 Vishal Shivshankar Padghan,
Age 19 yrs., Occ. Education,

Both are r/o Khultabad, Tq. Khultabad,
Dist. Aurangabad.

3 Netaji Anantrao Dhargave,
Age 45 yrs., Occ. Labour,
R/o Near Milind College, Plot no.6,
Laxmi Colony, Aurangabad.

Appellants

... **Versus** ...

1 The State of Maharashtra,
Through Police Inspector,
Police Station, Khultabad,
Dist. Aurangabad.

2 Dilip Daulatrao Bavaskar,
Age 28 yrs., Occ. Business,
R/o Rajiv Gandhi Nagar, Khultabad,
Tq. Khultabad, Dist. Aurangabad.

... **Respondents**

...

Mr. M.S. Karad, Advocate for appellant No.3

Mr. S.W. Munde, APP for respondent No.1/State

Mr. U.M. Maske, Advocate (appointed) for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th DECEMBER, 2020.

JUDGMENT :

1 **Admit.**

2 Present appeal has been filed under Section 14-A(2) of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
by the original accused persons to challenge the order dated 03.10.2020
passed by learned Special Judge under The S.C. & S.T. (POA) Act,
Aurangabad in Criminal Bail Application No.1326/2020. The applicants
were apprehending their arrest in connection with Crime No.294/2020
registered with Khultabad Police Station, Dist. Aurangabad for the offence
punishable under Section 324, 504 read with Section 34 of the Indian Penal
Code and under Section 3(1)(r)(s) and 3(2)(va) of the Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act.

3 It will not be out of place to mention here that this Court by
order dated 16.10.2020 dismissed the appeal as against appellant Nos.1 and
2. However, it proceeded for appellant No.3. Hence, now, the appeal is
considered only for the appellant No.3.

4 Heard learned Advocate Mr. M.S. Karad for appellant No.3, Mr.

S.W. Munde, APP for respondent No.1/State and learned appointed Advocate Mr. U.M. Maske for respondent No.2.

5 It has been vehemently submitted on behalf of the appellant No.3 that the learned Special Judge has not considered all the points involved in the matter and the contents of the FIR lodged by present respondent No.2. The contents of the FIR would show that the informant and others had taken dinner in the hotel owned by appellant No.1. Respondent No.2 states that when dispute arose regarding the bill, he was abused. Appellant No.1 had told informant and others that the menu card gives old rate, and therefore, he has charged it as per the new rate. Informant got annoyed. The dispute appears to be on the point of bill and it can be inferred that the informant had no intention to pay the bill. He has falsely implicated the appellant No.3. Further, respondent No.2 himself is a member of Scheduled Caste, and therefore, his act under the Atrocities Act cannot be said to be made out against him.

6 Per contra the learned APP as well as learned appointed Advocate to represent the case of respondent No.2-informant strongly opposed the appeal, on the ground, that the allegation against the appellant No.3 also are that he had assaulted the informant with the glass bottle on his head and right hand. He had the knowledge that the informant is a member

of Scheduled Caste, and therefore, the offence under Atrocities Act is made out.

7 At the outset, it is to be noted that the learned Special Judge has rejected the application of all the three accused persons on the ground that *prima facie* offence has been made out against all of them under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Atrocities Act. The decision has been arrived at on the basis of the pronouncement by this Court in **Lahu Vitthalrao Bhosale Vs. The State of Maharashtra and another [Criminal Appeal No.194 of 2019] decided on 03-04-2019**. Further, even as per the other pronouncements by this Court and the Hon'ble Supreme Court in the case of **Prathvi Raj Chauhan Vs. Union of India and others [WP (C) No.1015 of 2018] delivered on 10-02-2020**, it can be said that the Special Court dealing with the bail applications involving the Atrocities Act, especially, the pre-arrest bail applications, should consider the contents of the FIR, come to its own conclusion as to whether offence under the Atrocities Act made out *prima facie* or not and then decide whether application would be barred under Section 18 of the said Act. When the application would be barred under Section 18 of the Atrocities Act, then no question arises for grant of any relief.

8 In order to see as to whether *prima facie* offence has been made

out against appellant No.3 or not, we will have to consider the contents of the FIR. The informant has specifically stated that when he and his two friends had dinner at about 9.00 p.m. on 08.09.2020, they were charged Rs.900/-. He told appellant No.1 that the charge should be according to the menu card, but then appellant No.1 told that the said menu card is old and, therefore, he started writing the bill by hand. Informant requested him to reduce the amount of the bill, at that time, appellant No.1 uttered “काय रे मांगट्या हो, तुझी औकात आहे का जेवण करायची, तुम्ही मागुनच खा”. Further, appellant Nos.2 and 3 came there and he says that they started abusing. Appellant No.3 is serving as waiter with the said hotel. The informant then says that he was assaulted by appellant No.1 on his left hand which resulted in bleeding injury. Appellant Nos.2 and 3 then assaulted him with glass bottle on his head and right hand causing injury to his right hand. Important point to be further noted is that the learned Special Judge had considered the statements of witnesses, when he went through the papers produced by the prosecution which supports the FIR. As regards the role of appellant No.2 is concerned it is stated that he had assaulted the informant with bottle. Therefore, as against appellant No.1, the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act *prima facie* appears to have been made out and as against appellant No.2 it would be under Section 3(2)(va) of the Atrocities Act in addition to the said offences attracted to appellant No.1.

9 As regards appellant No.3 is concerned, he has produced on record the caste certificate which shows that he himself is a member of Scheduled Caste. Section 3(1) of Atrocities Act starts with words - "Whoever, not being a member of Scheduled Caste or Scheduled Tribe...". Therefore, whatever offences those have been narrated and for which the punishment has been provided under Section 3 of the Atrocities Act would be attracted only to those persons who are not member of Scheduled Castes or Scheduled Tribes. This basic aspect appears to have been not considered by the learned Special Judge. If offence under the Atrocities Act cannot be attracted against the member of Scheduled Caste, there is no question of any bar under Section 18 of the said Act to entertain the application of that accused and, therefore, case is made out by appellant No.3 to grant bail. As regards the offences under Indian Penal Code are concerned, they all are bailable. By order dated 16.10.2020 interim protection was granted to the appellant No.3, and therefore, it deserves to be made absolute. Hence, following order.

ORDER

1 The appeal against appellant Nos.1 and 2 already stood dismissed.

2 The appeal against appellant No.3 stands allowed.

3 The order passed by learned Special Judge, under The SC & ST (POA) Act, Aurangabad in Criminal Bail Application No.1326/2020 dated 03.10.2020, in respect of appellant No.3 is hereby set aside. Said application in respect of appellant No.3 stands allowed.

4 The ad-interim protection, granted by this Court earlier to appellant No.3 vide order dated 16.10.2020, is hereby confirmed and made absolute. In the alternative, in the event of arrest of appellant No.3, in connection with Crime No.294 of 2020 registered with Khultabad Police Station, Dist. Aurangabad for the offence punishable under Section 324, 504 read with Section 34 of IPC and under Section 3(1)(r)(s) and 3(2)(va) of the Atrocities Act, he be released on P.R. and S.B. of Rs.15,000/-.

5 Appellant No.3 shall not tamper with the evidence of prosecution, in any manner and shall cooperate with the investigation.

6 He shall remain present before the Investigation Officer on every Saturday between 10.00 a.m. to 02.00 p.m. till filing charge sheet.

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

(Smt. Vibha Kankanwadi, J.)