

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

914 CRIMINAL APPEAL NO.620 OF 2020

- 1) Bhau s/o Poma Chavan,
Age 76 years, Occupation Agri.,
- 2) Sudam s/o Bhau Chavan,
Age 30 yers, Occupation Agri.,
Both R/o Ambu Naik Tanda,
Khandavi Tq.Georai Dist.Beed. **...Appellants.**
(Orig.Accused No.18 and 19)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Georai
Dist. Beed.
- 2) Santosh s/o Mohan Bhosle,
Age 30 years, Occupation Agri.,
R/o Ambu Naik Tanda, Khandavi
Tq.Georai Dist.Beed. **...Respondents.**

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WITH

CRIMINAL APPEAL NO.585 OF 2020

- 1) Avesh s/o Ankush Chavan (Name as per FIR)
Correct Name : Avinash s/o Ankush Chavan,
Age 20 years, Occupation Education.
- 2) Ankush s/o Gampu Chavan,
Age 45 years, Occupation Agri.,
Both R/o Khandavi Tanda, Khandavi
Tq. Georai Dist. Beed. **...Appellants.**
(Orig.Accused No.14 and 15)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Georai
Dist. Beed.

- 2) Santosh s/o Mohan Bhosle,
Age 30 years, Occupation Agri.,
R/o Ambu Naik Tanda, Khandavi
Tq.Georai Dist.Beed. **...Respondents.**

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**WITH
923 CRIMINAL APPEAL NO.553 OF 2020**

- 1) Sanjay s/o Gappu @ Pomya Chavan,
Age 40 years, Occupation Agri.,
(Orig.Accused No.10)
- 2) Pralhad @ Palya Gappu @ Ramu Chavan,
Age 30 years, Occupation Agri.,
(Orig.Accused No.13)
- 3) Sunil Deu @ Devidas Chavan,
Age 20 years, Occupation Agri.,
(Orig.Accused No.4)
- 4) Deu s/o Soma @ Poma Chavan,
Age 49 years, Occupation Agri.,**(abated
vide order dated 02-11-2020)**

All R/o Ambunaik Tanda, Khandavi
Tq. Georai Dist. Beed. **...Appellants.**

VERSUS

- 1) The State of Maharashtra,
Through Police Station Georai
Dist. Beed.
- 2) Santosh s/o Mohan Bhosle,
Age 30 years, Occupation Agri.,
R/o Ambu Naik Tanda, Khandavi
Tq.Georai Dist.Beed. **...Respondents.**

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Advocate for Appellants : Mr. Savant Vilas P.
APP for Respondent-State : Mr. A. M. Phule.
Advocate for Respondent No.2 : Mr. A. L. Kanade.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 04-12-2020.

JUDGMENT :

1. Heard learned Advocate for appellants.
2. Since arguable points are made, the appeals are Admitted.
3. By consent the appeals are taken up for final disposal.
4. Appellants are original accused No.18, 19, 14, 15, 10, 13, 4 respectively.
5. In Criminal Appeal No.620 of 2020, Issue notice to the respondents. Learned APP waives notice for respondent-State and Learned Advocate Mr. A. L. Kanade waives notice for respondent No.2 Criminal Appeals No.520 of 2020 and 585 of 2020.
6. All the appeals are filed under Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. (hereinafter referred to as 'Atrocities Act' for the sake of brevity), to

challenge the respective orders passed by learned Special Judge / Additional Sessions Judge, Beed, rejecting the applications filed by the appellants under Section 438 of Code of Criminal Procedure.

7. Heard learned Advocate Mr. V. P. Savant for appellants, learned Additional Public Prosecutor Mr. A. M. Phule for respondent No.1-State, and learned Advocate Mr. A. L. Kanade for respondent No.2. In order to cut short it is to be noted that all of them have made submissions in support of their respective contentions.

8. Perusal of the First Information Report which has been lodged lodged by present respondent No.2 against 24 persons would show that all of them had barged in "Pardhi Vasti" with deadly weapons, and it is stated that, without any inquiry they started assaulting the person they could noticed. They did not take care of that whether that person is gents, ladies or a small child. It is stated that the informant was assaulted with stick by accused Sudam Bhau Chavan. It is also stated that one Kajal has been severely beaten on her thigh. One Rukminbai sustained injury to her head. It has been contended that the informant is Pardhi by community and the accused persons are Banjara.

9. When the FIR shows that large number of persons had attacked the informant, his family members and others, yet the FIR is silent regarding verbal exchanges those would have been made. In fact, the FIR does not mention that any abuses/ insult was made to the informant or either of his family member in the name of his caste. The allegations about assault at this stage would disclose the offence under Section 324 of Indian Penal Code which is bailable. If at all it is to be connected to Section 3 (1) (r), 3 (1) (s), 3 (2) (va) of the Atrocities Act, then it will have to be shown by the prosecution that the said act was done by the mob only because the informant and his family members were of a particular caste or tribe. The FIR does not show the said fact, therefore *prima facie* offence under the Atrocities Act was not made out. There was absolutely no bar under Section 18 of the Atrocities Act for the learned Special Judge to entertain the said application under Section 438 of the Code of Criminal Procedure. We are guided by the catena of Judgments of this Court as well as the Hon'ble Apex Court, especially vide pronouncement of *Prithviraj Chavan v. Union of India, Writ Petition No.1015 of 2018, decided by Hon'ble Apex Court on 10-02-2020*, wherein it has been observed that : -

“10. Concerning the applicability of provisions of Section 438

Cr.P.C., it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18A(i) shall not apply. We have clarified this aspect while deciding the review petitions.”

10. As the learned Special Judge has erred and the fact that the investigation appears to have been almost complete, further it is stated that the alleged weapons have been seized from the spot, the physical custody of the appellants is not required. The appeals deserve to be allowed.

11. In Criminal Appeals No.585 of 2020 and No.553 of 2020, interim protection has already been granted to the respective appellants. That interim relief deserves to be made absolute. Hence, following order.

ORDER

- 1) All appeals are hereby allowed.
- 2) The order passed by learned Additional Sessions Judge, Beed, in Criminal Bail Application No.775 of 2020, dated 12-11-2020, in Criminal Bail Application No.709 of 2020, dated 28-10-2020, and in Criminal Bail Application No.666 of 2020, dated 13-10-2020, are hereby set aside. Said applications stand allowed.

3) The ad-interim protection, granted by this Court earlier to appellants in Criminal Appeal No.585 of 2020 and No.553 of 2020, vide orders dated 06-11-2020 and 02-11-2020 respectively, are hereby confirmed and made absolute.

4) In the event of arrest of appellants Bhau s/o Poma Chavan, Sudam s/o Bhau Chavan, Avesh s/o Ankush Chavan, Ankush s/o Gampu Chavan, Sanjay s/o Gappu @ Pomya Chavan, Pralhad @ Palya Gappu @ Ramu Chavan, Sunil Deu @ Devidas Chavan, in connection with Crime No.420 of 2020, registered with Georai Police Station Tq. Georai Dist. Beed, for the offences punishable under Section 324, 323, 143, 147, 148, 149, 427 of Indian Penal Code, under Section 3 (1) (r), 3(1) (s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (prevention of Atrocities) Act, the appellants be released on PR and SB of Rs.15000/- each (fifteen thousand).

5) The appellants shall not indulge in any criminal activity and they shall not tamper with the evidence of prosecution in any manner.

6) The appellants shall attend the Police Station, Georai Tq. Georai Dist. Beed, on every Monday and Wednesday between 10.00 a.m. to 02.00 p.m., till further orders and shall co-operate with the investigation.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-