

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1045 OF 2019

Pradeep Ramchandra Ubale,
Age 62 yrs., Occ. Service,
R/o Shankar Nagar, Nanded,
Tq. & Dist. Nanded.

... Appellant

... Versus ...

- 1 The State of Maharashtra,
Through Police Station,
Nanded Gramin, Tq. & Dist. Nanded.
- 2 Dipali Gangadhar Chikhalikar,
Age 27 yrs., Occ. Service,
R/o HUDCO, Shivneri Nagar,
Nanded, Tq. & Dist. Nanded.

... Respondents

...

Mr. S.M. Kulkarni, Advocate for appellant

Mr. B.V. Virdhe, APP for respondent No.1

Mrs. Pratibha K. Chaudhari, Advocate (appointed) for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 02nd FEBRUARY, 2020

PRONOUNCED ON : 12th MAY, 2020

JUDGMENT :

2 Present appeal has been filed by the original accused under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Section 438 of the Code of Criminal Procedure, 1973 to challenge the order passed by learned Additional Sessions Judge, Nanded in Criminal Appeal No.832/2019 dated 03.10.2019, whereby his application for pre-arrest bail came to be rejected.

3 The appellant has come with a case that after retirement he was selected as In-charge Security Officer of Government Medical College, Nanded. He is serving there since 01.03.2019. He has been given office/chamber in the premises of the Hospital itself. A patient by name Pallavi Aakash Khare was admitted in the hospital for delivery. She had undergone cesarean operation, but her child was suffering from high fever. In the intervening night of 22.06.2019 to 23.06.2019 it was advised, that the child should be taken for check up from a Paediatrician. Patient Pallavi was admitted in Ward No.17. The nursing staff had asked the attendant of the patient i.e. her mother by name Ranjana Janardhan Gaikwad to go to the informant i.e. present respondent No.2 for keys of the main gate of Ward No.17. Respondent No.2 was working as Security Guard and she got annoyed with the patient and her attendant, who had disturbed her sleep. The informant not only abused the patient and the relative but slapped the

patient. The said patient narrated the incident to the appellant. Night Supervisor also narrated the said incident. On the next morning the first shift Supervisor Ajay Gaikwad had contacted the patient, who was abused by the informant and at that time, it was insisted by the patient that report should be lodged against the informant. Accordingly, written complaint was filed. The appellant was required to take note of the said incident to the register and thereafter it was reported to Superintendent of Police as well as the Managing Director of Maharashtra Security Board, Mumbai. On the basis of said report given by the appellant, a show cause notice was issued to respondent No.2 as well as one Mr. Ambatwar, who was Supervisor in the night shift, on the day of incident. In view of the said show cause notice the respondent No.2 gave threat to appellant, and therefore, once again a fresh show cause notice was issued by the appellant. There was no response from the respondent No.2 as well as said Ambatwar. Respondent No.2 gave threat to the appellant on 05.07.2019 in presence of her father with dire consequences. Therefore, the appellant filed application against the informant as well as Mr. Ambatwar on 10.07.2019. The Security Department, Mumbai issued notices on 16.08.2019 and final notice of transferring Mr. Ambatwar to Mumbai on demoting post. Informant was removed from her services from 17.09.2019. When informant had come to know about the penal action intended to be taken against her, she attended

the parade at about 6.30 a.m. to 8.30 a.m. on 14.09.2019. After the parade was over she met appellant and inquired, as to how harsh action is ordered by the Security Office against her. At that time, subordinate of staff of the appellant was present. Appellant had tried to pacify the informant and her friend Komal Ghotkikar, who is also Security Guard. However, at that time, the informant tried to consume good night liquid. The appellant and his staff prevented her from doing so. Informant was taken to ward for treatment after a call to police. But in the meantime she had taken another liquid outside the appellant's chamber, with a view to commit suicide. With some ill intention the informant had then given a statement to the police alleging offence punishable under Section 354, 394 of the Indian Penal Code read with Section 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On the basis of her said report offence vide Crime No.456/2019 has been registered. It has been contended that a false complaint has been lodged by the informant in order to overcome her own defects and action taken. Appellant had, therefore, approached the Special Court for the pre arrest bail, however, it has been rejected by holding, that there is prima facie case and his application is barred under Section 18 and 18-A of the Atrocities Act. Hence, present appeal.

learned APP Mr. B.V. Virdhe for respondent No.1-State. Even after receiving notice when the respondent No.2 failed to appear, this Court has appointed Mrs. Pratibha K. Chaudhari for pleading on behalf of respondent No.2.

5 Learned Advocate appearing for the appellant has reiterated all those facts, which are stated above and taken this Court through all the documents, which are mainly in the form of report, written complaint filed by Ranjana Gaikwad, who was the mother of patient, whose child was suffering from fever, orders issued by present appellant and show cause notices issued to the informant by appellant as well as by Maharashtra State Security Board, report given by Deputy Director, Aurangabad Region regarding behaviour of the informant and his conclusion that the behaviour of the informant was improper. It has been submitted that since all these actions were taken against the informant on the basis of report submitted by the appellant, the informant was annoyed and she has then lodged a false report. When the First Information Report has been filed with mala fide intention, then there was no bar to entertain the pre arrest bail application by the Special Judge. The learned Special Judge has unnecessarily taken a view that the application is barred under Section 18 and 18-A of the Atrocities Act.

6 The learned Advocate for the appellant has relied on the decision in **Dr. Subhash Kashinath Mahajan vs. The State of Maharashtra and another**

in Criminal Appeal No.416 of 2018 decided on 20th March, 2018, wherein, it has been held that when the FIR is filed with mala fide intention and prima facie the offence is not made out under the Atrocities Act, then the liberty cannot be curtailed, case can still be said to have been made to grant pre arrest bail.

7 Per contra, the learned APP as well as the learned Advocate appearing for respondent No.2 supported the reasons given by learned Special Judge. The statement of the informant is supported by her friend Komal Ghotkekar, and therefore, when the FIR specifically says that the appellant had uttered “तु आंबटवाड सोबत का येते त्यांचे सोबत तु येवू नको नोकरी करणा-या पोरी काही चांगल्या नसतात त्या वेश्या व्यवसाय करतात म्हाराच्या लोकांना कितीही सांगितले तरी समजत नाही.” shows that prima facie case under Atrocities Act has been made out.

The learned Advocate for the respondent No.2 has relied on the decision of Rajasthan High Court in **Munir Khan vs. State of Rajasthan, LAWS(RAJ)-1991-1-21**, wherein the pre arrest bail was rejected.

8 At the outset, it is to be seen that this Court while passing order on 15.10.2019 has expressed that a prima facie case for protecting the liberty has been made out by the appellant, had granted ad interim relief and the said relief is continued till today. The legal position stands settled, now, in

view of decision in **Prithviraj Chavan vs. Union of India in Writ Petition No.1015 of 2018** decided by Hon'ble Apex Court on 10.02.2020, wherein it has been held -

“10. Concerning the applicability of provisions of section 328 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.”

9 The documents produced on record show, that much prior to the FIR on the basis of complaint filed by Ranjana Gaikwad, action was taken against the informant. Prompt reporting was done by the appellant to the superior authority. The superior authority has held inquiry and even considered the CCTV footage of the hospital and had come to the conclusion that the behaviour of the informant is objectionable. Thereafter, it appears that on the day of incident in the office of the appellant, informant and her friend went and it appears that they were arguing against the appellant. Other staff was also present and yet, the informant had tried to consume some poisonous substance. The consumption has been stated in the FIR itself. However, she has tried to give colour by saying, that since earlier many days the behaviour of the appellant with her was outrageous. It will not be out of place to mention here that the police papers have been made available

by the learned APP and they show, that now even witness Komal Ghotkekar in her statement under Section 164 of Cr.PC. is not supporting the informant. She says that after the parade was over she went inside the office to make signature and after signing she had come out and informant was alone. After informant came out within 2-3 minutes she started vomitting, and therefore, they made arrangements to admit her to hospital. The other staff members are also giving such statements. It also appears from the statements of the witnesses that the informant had the idea that her services would be terminated. Therefore, even at this stage observation can be made that the FIR appears to have been lodged with mala fide intention, and therefore, the liberty of the appellant deserves to be protected. There is absolutely no bar under Sec. 18 or/ and 18A of the Atrocities Act for allowing this appeal/ original application, since there is material placed on record to show that no prima facie case has been made out for attracting any offence under the Atrocities Act. All these aspects, in fact, ought to have been considered by the learned Special Judge, however, cryptic order has been passed in a mechanical way, without application of mind. This Court is coming across such cryptic orders, only on the point that pre-arrest bail is barred under Section 18-A of the Atrocities Act. The Special Judge is required to consider the various pronouncements of this Court as well as pronouncement of the Apex Court in **Prithviraj Chavan** (supra) and it is expected that they should

go through the FIR and the other documents of the investigation to come to a conclusion, as to whether a prima facie case has been made out or not. Special Judge should also consider as to whether the FIR has been filed with mala fide intention. If orders are passed in such a mechanical way, that too without application of mind then, it increases the burden of superior Courts.

10 In view of the observations made above by this Court that the liberty of the appellant deserves to be protected, the earlier order passed by this Court on 15.10.2019 deserves to be confirmed by allowing the appeal. It is further clarified that the observations made in this order are prima facie on the basis of material on record. The Trial Court should not get influenced by the same at the time of trial. Hence, following order.

ORDER

1 The appeal stands allowed.

2 The impugned order, passed by learned Special Judge/Additional Sessions Judge, Nanded in Criminal Bail Application No.832/2019 dated 03.10.2019, is hereby set aside. Said application stands allowed.

3 Order passed by this Court on 15.10.2019 is hereby confirmed.

(Smt. Vibha Kankanwadi, J.)