

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

**CRIMINAL APPEAL NO. 06 OF 2021**

- 1) Chetan s/o Arvind Patil,  
Age 23 years, Occ. Agriculture.
- 2) Arvind s/o Pralhad Patil,  
Age 45 years, Occ. Agriculture.
- 3) Atesh s/o Vijay Deore,  
Age 25 years, Occ. Agriculture.
- 4) Vijay s/o Pralhad Patil,  
Age 52 years, Occ. Agriculture.
- 5) Yogesh s/o Vijay Patil,  
Age 29 years, Occ. Agriculture,

All r/o. Wadi Tq. Pachora,  
District Jalgaon.

... **Appellants.**

**VERSUS**

- 1) The State of Maharashtra,  
Through Police Inspector,  
Pimpalgaon Hareshwar Police  
Station, Tq. Pachora, Dist.  
Jalgaon.
- 2) Smt. Pareshanbi Tadvi,  
Age 29 years, Occ. Household,  
R/o. Shewale, Tq. Pachora,  
District Jalgaon.

... **Respondents.**

...

Advocate for the Appellants : Mr. Gangakhedkar, h/f Mr. Deshmukh  
Mahesh S.

APP for the Respondent/State : Mr. V.M. Kagne.

Advocate for the Respondent No. 2 : Ms. A. S. Jadhav (appointed)

**CORAM : MANGESH S. PATIL, J.**

**DATE : 23.02.2021.**

**PER COURT :**

By this appeal under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter 'the Atrocities Act'), the appellants are impugning the judgment and order passed by the learned Special Judge refusing them bail under Section 438 of the Code of Criminal Procedure in connection with Crime No. 253/2020, registered with Pimpalgaon Hareshwar Police Station, District Jalgaon, for the offences punishable under Section 143, 147, 149, 324, 323, 504, 506, 354A of the Indian Penal Code and under Section 3(1)(r),(s),(w)(i),(ii) of the Atrocities Act.

2. The learned advocate for the appellants would submit that some incident did take place as alleged in the F.I.R. on the date and time mentioned therein. However, he would submit, there is a F.I.R. as well as counter F.I.R. The counter F.I.R. has been lodged at the instance of the appellants. In the F.I.R. lodged by the informant/respondent No. 2 only the offences punishable under the Indian Penal Code excluding, the allegations regarding molestation and in respect of hurling of abuses on caste line under the Atrocities Act were made out. He would point out that it is after the appellants lodged a counter F.I.R., as an after thought, after lapse of 15 days the respondent No. 2 has come out with a further disclosure attributing the appellants with allegations regarding molestation and the offences under the Atrocities Act.

3. He would submit that it is a clear case of concoction. Though the matter will have to be decided and can be decided at the trial such an enormous delay in coming out with serious allegation at this juncture is sufficient to create a reasonable doubt about the veracity of the allegations and consequently bar under Section 18A(2) of the Atrocities Act would not be applicable in the light of the decision of the Supreme Court in the Case of **Prathvi Raj Chauhan Vs. Union of India; (2020) 4 Supreme Court Cases 727**. The learned advocate would submit that the learned Special Judge has clearly ignored such a provision of law and has also overlooked the decisive

fact of delay in coming out with the allegations regarding offences under the Atrocities Act. He would therefore submit that the appellants are entitled to anticipatory bail. The impugned order be quashed and set aside.

4. Learned A.P.P. and the learned advocate for the respondent No. 2 strongly oppose the appeal. They submit that the delay in coming out with the disclosure can only be gone into and commented upon at a full fledged trial. At this juncture when the respondent No. 2, may be belatedly, has come out with allegations, about molestation and hurling of abuses on caste line, the bar under Section 18A(2) of the Atrocities Act would come into play.

5. The learned A.P.P. would also submit that it is not only the respondent no. 2 but even the witnesses have come out with similar version in their supplementary statements. The offence being serious and can easily be made out from the allegations, the appellants are not entitled to anticipatory bail.

6. The learned advocate for the respondent No. 2 also points out the minority view from the decision in the case of **Prathvi Raj Chauhan (supra)** and particularly the observations in paragraph No. 32 and 33 which expects and puts a caveat on the observations in the majority view.

7. I have carefully gone through the decision in the case of **Prathvi Raj Chauhan (supra)**. As can be discerned though some different reasons and a caveat has put in minority view, it is a concurrent judgment holding that Section 18 and 18A of the Atrocities Act have no application where *prima facie* the case is not made out. Though the reappreciation of evidence is not required, a finding to this effect would enable a Court to grant anticipatory bail under Section 438 of the Code of Criminal Procedure.

8. Bearing in mind the principles laid down in the case of **Prathvi Raj Chauhan (supra)** if one examines the facts in matter in hand it is apparent that in the F.I.R. which was lodged on the very next day of the incident the respondent No. 2 was prompt enough to point out and describe the incident

and the role attributable to the appellants. Conspicuously, she omitted to disclose about she having been molested and the appellants having hurled abuses on caste line.

9. It is further important to note that the appellants lodged a counter F.I.R. on 24.11.2020 in respect of the occurrence which had taken place at the same time and place levelling similar allegations against the respondent No. 2 and her family members on the basis of which a separate crime was registered.

10. It is further pertinent to note that even statement of the respondent No. 2 was recorded, when she was under going treatment, in presence of a doctor. However, even in that statement she had not made any such allegation about molestation and hurling of abuses on caste line.

11. It is apparent that her supplementary statement was recorded on 03.12.2020 wherein for the first time she alleged about appellant Gopi having molested her by pulling her saari. She also improvised by saying that the appellants also abused her on caste lines. More importantly she does not disclose as to why and how she could not come out with all these disclosures at some earlier point of time, if not while lodging the F.I.R. on 19.11.2020. Similarly the self same witnesses whose statements were recorded earlier under Section 161 of the Code of Criminal Procedure have come out with similarly improvised version in their supplement statements as well. Even they have not disclosed any reason as to why they had not made any such disclosure at earlier point of time.

12. Considering the fact that though some incident did take place and even the persons from both the sides had sustained some injuries, none of those injuries were grievous. It is under these peculiar facts and circumstances there is room to entertain a reasonable doubt about the veracity of the allegations as far as molestation and the offences under the Atrocities Act are concerned. It is in view of such peculiar state of affairs, in

my considered view, applying the principles laid down in the case of **Prathvi Raj Chauhan (supra)** the bar under Section 18 and 18A of the Atrocities Act would not come into play.

13. The learned Special Judge has overlooked all the aforementioned facts and circumstances and the law and has refused to grant anticipatory bail by referring to Section 18 and 18A of the Atrocities Act. He has clearly erred in refusing to grant anticipatory bail.

14. The Application is allowed. The impugned judgment and order is quashed and set aside. In the event of arrest of the appellants in connection with Crime No. 253/2020, registered with Pimpalgaon Hareshwar Police Station, District Jalgaon, for the offences punishable under Section 143, 147, 149, 324, 323, 504, 506, 354A of the Indian Penal Code and under Section 3(1)(r),(s),(w)(i),(ii) of the Atrocities Act, they shall be released on bail on their executing a personal recognizance for an amount of Rs. 15,000/- each and furnishing a solvent surety in the like amount each, subject to following conditions :

(a) They shall attend the concerned police station as and when called by the Investigating Officer and shall cooperate him.

(b) They shall not tamper the evidence or influence the witnesses.

(c) They shall not repeat the Crime.

15. Learned advocate Ms. A.S. Jadhav is appointed by this Court to represent the respondent No. 2. Her fees is quantified at Rs. 5000/- (Rs. Five Thousand only).

(MANGESH S. PATIL, J.)

mkd/-