

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.59 OF 2021

- 1 Vishal @ Bhaguram Kisanrao Shrirang,
Age 40 yrs., Occ. Agri.,
- 2 Indrajeet @ Pandurang Kisanrao Shrirang,
Age 34 yrs., Occ. Agri.,
- 3 Sharad @ Trimbak Balu Gore,
Age 23 yrs., Occ. Agri.,
- 4 Rama @ Rameshwar Balu Gore,
Age 20 yrs., Occ. Agri.,

All are r/o Pohner, Tq. Parli (V),
Dist. Beed.

... Appellants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Sirsala,
Tq. Parli (V), Dist. Beed.
- 2 Uddhav Yada Bhadre,
Age 65 yrs., Occ. Labour,
R/o Pohner, Tq. Parli (V),
Dist. Beed.

... Respondents

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Mr. S.S. Thombre, Advocate for appellants

Mr. N.T. Bhagat, APP for respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 30th MARCH, 2021

JUDGMENT :

1 **Admit.**

2 Present appeal has been filed under Section 14-A of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
to challenge the order of rejection of the bail application filed under Section
438 of the Code of Criminal Procedure, 1973 by the present applicants before
the learned Special Judge, Ambajogai under the Atrocities Act in Criminal
Bail Application No.11/2021 on 01.02.2021. The appellants are
apprehending their arrest in connection with Crime No.4/2021 dated
08.01.2021 registered with Sirsala Police Station, Tq. Parli (V), Dist. Beed, for
the offence punishable under Section 323, 504, 506 read with Section 34 of
the Indian Penal Code, 1860 and under Section 3(1)(r)(s), 3(2)(va) of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 Heard learned Advocate Mr. S.S. Thombre for appellants and
learned APP Mr. N.T. Bhagat for the respondent No.1.

4 It has been vehemently submitted on behalf of the appellants
that the First Information Report has been lodged against them with political

motive. The alleged incident is stated to have taken place on 06.01.2021. However, the FIR has been lodged on 08.01.2021. There is inordinate delay of two days in lodging the report. Definitely, it has been used for concocting the story. No such incident as stated in the FIR has ever taken place. The appellant No.1 is the Deputy Sarpanch of village Pohner, Tq. Parli (V), Dist. Beed. The informant is political opponent of the appellant No.1. In view of upcoming elections and to maling the reputation of the appellant No.1 this false story has been concocted. This aspect has not been considered by the learned Special Judge. So also, he failed to consider that the appellant Nos.2 to 4 have not abused informant in any manner, much less attracting provisions of the Atrocities Act. Their application ought to have been then allowed, as it could not have been stated that there is bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. He, therefore, canvassed for setting aside the impugned order and grant of anticipatory bail.

5 Per contra, the learned APP strongly opposed the appeal and submitted that the order passed by the learned Special Judge, Ambajogai is perfect and reasoned. The case laws have been properly considered, and therefore, there is no need to interfere. The FIR attributes role to each of the appellant. Delay is always not fatal.

6 Present respondent No.2 was served, however, he failed to appear. That means, the opportunity was given to the informant, in view of Section 15 of the Atrocities Act. However, he failed to appear.

7 The prosecution, that is, the case in the FIR is that the informant is a member of Scheduled Caste. He went to one tea shop to drink tea around 9.00 a.m. on 06.01.2021 and he was discussing his domestic dispute with one Bhagwat Hinge. Appellant No.1 was sitting nearby and it is stated that appellant No.1 told informant that only chitchatting is not allowed and whether they have any work to do or not. Appellant No.1 started abusing without any reason and also intentionally stating “महारड्या लई माजलास का”. Thereafter he picked up a stone and hit him on ear, resulting in injury. The appellant Nos.2, 3 and 4 had assaulted him by belt and abused him. It was also told that if he lodged a complaint with police then he will not be spared. Thereafter, the quarrel was separated by one Nawab Khajabhai Shaikh and Balu Rangnath Gaikwad. Informant's wife took him to Sirsala Police Station and then he was referred to Government Hospital, Parli. The doctor there told that for him hospital is available at Pohner, and therefore, he should go to Pohner and again he came back to said village, took treatment in hospital at Pohner and then lodged the report.

8 Perusal of the above said FIR would clearly show that abuses in

the name of caste have been given by the appellant No.1, and therefore, prima facie case has been made out under Section 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against him. No doubt, there appears to be delay of two days, but there is no such material on record to show, at this stage, that the FIR is politically motivated and the delay was utilized for concoction.

9 It will not be out of place to mention here that appellant No.1 appears to have lodged report on 09.01.2021 in respect of alleged incident, that took place on 06.01.2021 at about 10.00 a.m. near Idgah in their village, which is against six named persons with three unknown persons for the offence punishable under Section 143, 147, 149, 341, 395, 327, 323, 504 of the Indian Penal Code. The informant in present case is accused in that FIR. However, that FIR being subsequent to the present FIR, no need to consider that FIR. Taking into consideration the prima facie offence under Atrocities Act made out against appellant No.1, his application under Section 438 of Cr.P.C. was not maintainable under Section 18 of the Scheduled Castes and Scheduled Tribes Act. Hence, appeal against him deserves to be dismissed. When this position was asked to the learned Advocate for the appellants he sought withdrawal of the appeal in respect of appellant No.1 and that liberty deserves to be granted.

10 Now, as regards appellant Nos.2 to 4 are concerned, it has been stated in the FIR that they were along with the appellant No.1 and they had given assault to the informant with belt, resulting in covert injury and they had abused the informant. Now, here two things have not clarified in the FIR by the informant; first is, what abuses were given by the appellant Nos.2 to 4 and secondly, whether there was any such kind of intention that they should assault the informant only on the count that he is member of Scheduled Caste. So many authorities have been referred by learned Special Judge including **Hitesh Varma vs. The State of Uttarakhand and another** (Criminal Appeal No.707 of 2020, decided on 05.11.2020) (Three Judge Bench). The learned Judge went on to say that the facts are different and only took cognizance of a fact that the incident had occurred in public place. But what he could not notice is that the observations are that of insults or intimidation to a person will not be an offence under the Act, unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. Under such circumstance, when this fact is lacking in the FIR as against the appellant Nos.2 to 4, they deserve the protection. Further also taking into consideration the ratio laid down in **Prithviraj Chavan vs. Union of India in Writ Petition No.1015 of 2018** decided by Hon'ble Apex Court on 10.02.2020, they deserve protection. Hence, following order.

ORDER

1 Appeal stands allowed as against appellant Nos.2 to 4.

2 Appeal stands dismissed as withdrawn by appellant No.1.

3 The order in Criminal Bail Application No.11/2021 rejecting the bail under Section 438 of the Code of Criminal Procedure, 1973 to appellant Nos.2 to 4 passed by learned Special Judge, Ambajogai on 01.02.2021 is hereby set aside. The said application stands allowed against them.

4 In the event of arrest of the appellant Nos.2 to 4, in connection with Crime No.4/2021 registered with Sirsala Police Station, Dist. Beed, for the offence punishable under Section 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 3(1)(r)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they be released on P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand only) each.

5 They shall cooperate with the investigation and shall remain present before the Investigating Officer on every Friday between 10.00 a.m. to 02.00 p.m. till 01.05.2021.

6 They shall not tamper with the evidence of prosecution in any

manner.

7 They shall not indulge in any criminal activity.

(Smt. Vibha Kankanwadi, J.)

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