

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

931 CRIMINAL APPEAL NO.13 OF 2021

Shaikh Sardar s/o Shaikh Birham,
Age 55 years, Occ. Agri.,
R/o. Gandheli, Tq. & Dist.Aurangabad. ...Appellant

VERSUS

- 1) State of Maharashtra,
Through Police Station,
Chikalthana, Aurangabad.
- 2) Alka W/o Bapurao Apte,
Age 35 years, Occ. Household,
R/o. Gandheli, Tq. & Dist.Aurangabad. ...Respondents

...

Advocate for Appellant : Mr. Deshpande Jagdish V and Shivaji
Namdeorao Dudhate

APP for Respondent No.1-State : Mrs. R.P. Gaur
Advocate for Respondent No.2 : Mr. Mohanish V. Thorat

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**WITH
CRIMINAL APPEAL NO.63 OF 2021**

- 1) Juber Gulmahammad Pathan,
Age 50 years, Occ. Agri.,
R/o. Mu-Gandhili, At Post-Adgaon,
Gandheli, Tq. & Dist.Aurangabad.
- 2) Javed Khan Fayyaz Khan Pathan,
Age 32 years, Occ. Agri.,
R/o. Mu-Gandhili, At Post-Adgaon,
Gandheli, Aurangabad. ...Appellants

VERSUS

- 1) State of Maharashtra,
Through the Police Sub Inspector,
Police Station, Chikalthana, Aurangabad.
- 2) The Superintendent of Police,
Chikalthana, Aurangabad.

- 3) Alka W/o Bapurao Apte,
Age 35 years, Occ. Household,
R/o. Gandheli, Chikalthana, Aurangabad,
Tq. & Dist.Aurangabad. ...Respondents

...
Advocate for Appellant : Mr. Ali Zeeshan M.Zaidi
APP for Respondents No.1 & 2-State : Mrs. R.P. Gaur
Advocate for Respondent No.3 : Mr. Mohanish V. Thorat

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CORAM : MANGESH S. PATIL, J.

DATE : 25 FEBRUARY 2021

PER COURT :

These are the appeals under Section **14-A** of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (Hereinafter referred to as, "the Atrocities Act") by three different accused from Crime No.0445/2020 registered with Chikalthana Police Station, Aurangabad for the offences punishable under Section 143, 147, 148, 179, 323, 504 and 506 of the Indian Penal Code and under Section 3(1) (r) (s) and 3(2) (va) of the Atrocities Act, seeking bail in the event of their arrest.

2. It is alleged in the FIR that on 08.12.2020 at about 4.00 p.m., when the informant along with her friend were going to the market they saw that some of the accused were assaulting few persons. They were also threatening them of dire consequences, if they interfered in the functioning of the *Grampanchayat*. The two group were separated and one Deelip Kondiba Talekar, who was assaulted went towards the police station.

3. It is then alleged afterwords the appellants and their colleagues started pelting stones. They also assaulted one Sayyed Aayub Sayyed Halim. It is then alleged that when the informant and her friend were trying to pacify the quarrel and started questioning as to why these persons were pelting stones, they retorted by questioning her as to why she and her colleague were giving testimonies against them. It is then alleged that abuses on the caste times were hurled and they also threatened her of consequences, if she would reach the Police Station.

4. On the basis of such FIR, the offence was registered and the investigation is going on.

5. The learned Advocates for the appellants referring to the decision in the case of **Prathvi Raj Chauhan Vs. Union of India and Others, (2020)4 SCC 727** submit that there would be no bar to grant anticipatory bail under Section 18 and 18-A of the Atrocities Act. They point out that there is no *prima facie* material to reveal offences punishable under the Atrocities Act.

6. The learned Advocates would then submit that the allegations in the FIR are vague and omnibus. When the incident has taken place on the spur of moment and that there being no pre-meditation, the appellants cannot be singled out to attribute the

allegations under the Atrocities Act. They would also cite the decision in the case of **Hitesh Verma Vs. State of Uttarakhand and Another, (2020)10 SCC 710** and submit that there cannot be an offence under the Act unless such intimidation is on account of victim being from the Scheduled Castes or Scheduled Tribes category.

7. The learned APP and the learned Advocate for the informant-respondent No.2 and 3 strongly oppose the appeals. They would submit that there are specific allegations against the accused persons, about having hurled abuses on caste lines and even threatened the informant and her friend of consequences, if they approached Police. Prima Facie at this juncture, this much of material is enough to reveal that complicity of the appellants in committing the offences under the Atrocities Act.

8. They would also submit that this is not the first incident so far as appellant Juber Gulmahammad Pathan is concerned. He is involved in similar crime under the Atrocities Act regarding which crime was registered as Crime No.I-180/2017. He is bent upon to commit/repeat the crime, if he is released on bail. They would further point out that there are witnesses for the prosecution to corroborate the version of the informant in the FIR. Though, apparently, the allegations do not attribute the abuses to any specific individual one can infer that all the appellants were acting in unison. They all are responsible for all

the consequences that ensure from anything done in furtherance of the common object. Several persons had sustained injuries and custodial interrogation of the appellants is necessary.

9. I have carefully gone through the judgments passed by the learned Sessions Judge and the papers of the investigation.

10. If one takes into consideration the FIR carefully, it appears that it involves three episodes. In the first episode, two groups were involved, wherein, allegedly, the appellants' group was assaulting the members of the other group. Couple of persons had intervened. In the second episode, the appellants are stated to have started pelting stones towards a palace. In the third episode it is alleged that the appellants' group then started assaulting few persons and when the informant and her sister tried to intervene, the abuses were hurled at them, including the one on caste lines and these two women were threatened.

11. Accepting the statement of the witnesses, including that of the friend of the informant, who was accompanying her it is apparent so far as the aspect of assault is concerned, the informant and her friend were not involved and they were not at the receiving it. Going by the injuries sustained by the persons stated to have been assaulted by the appellants, they having sustained only simple injuries, the offences being charged in that respect would be trifle besides being bailable.

12. So far as the offences under the Atrocities Act are concerned, the present scrutiny would need to be restricted in verifying the facts and circumstances. Though, there are criminal antecedents against appellant Juber, the allegations in the FIR and the statements of the witnesses are *prima facie* vague and omnibus. Though the informant and her friend were identifying the persons from both the sides, they are conspicuously not attributing the abuses to any specific individual. They are also not identifying any specific individual for having threatened them. The allegations are vague and omnibus. All the accused persons have been collectively referred to.

13. If such is the state of affairs, when there is no pre-meditation so far as the third episode, wherein, the appellants attributed to have committed offences under the Atrocities Act, in my considered view, in the peculiar facts and circumstances of the case and the quality of the allegations the bar contained under Section 18 and 18-A of the Atrocities Act would not be applicable in view of the decision in the case of **Prathvi Raj Chauhan case** (*supra*).

14. The learned Sessions Judge has not appreciated these circumstances in their proper perspective and has refused to grant anticipatory bail. The orders are clearly illegal and need to be quashed and set aside and reversed.

15. Both the Appeals are allowed.
16. The impugned orders are quashed and set aside.
17. In the event of arrest of the appellants in connection with Crime No.0445/2020 registered with Chikalthana Police Station, Aurangabad for the offences punishable under Sections 143, 147, 148, 179, 323, 504 and 506 of the Indian Penal Code and under Section 3(1) (r) (s) and 3(2) (va) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, they shall be released on bail on their executing personal recognizance for an amount of Rs.20,000/- (Rupees twenty thousand) each and furnishing a solvent surety in the like amount each, subject to following conditions :
- a) The appellants shall attend concerned Police Station on three consecutive Saturdays, starting from 27.02.2021 between 11.00 a.m. and 01.00 p.m. and shall co-operate the Investigating Officer.
 - b) They shall not tamper the evidence or influence the witnesses.
 - c) They shall not repeat the crime.

(MANGESH S. PATIL, J.)