

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

**937 CRIMINAL APPEAL NO.95 OF 2021**

SALMAN BILAL QURESHI  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Muley Pramod N  
APP for Respondent – State : Mr. N. T. Bhagat  
Advocate for Respondent No.2 : Mr. N. R. Thorat (Appointed)

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 9<sup>th</sup> April, 2021**

**ORAL JUDGMENT :-**

. Admit.

2. Present appellant is apprehending his arrest in connection with Crime No.9 of 2021 registered with Wadwani Police Station, Dist. Beed dated 24.01.2021 for the offence punishable under Sections 354, 354D of Indian Penal Code and under Section 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as the 'Atrocities Act') and, therefore, he had approached the learned Additional Sessions Judge/Special Judge under the Atrocities Act, by filing an application i.e. Criminal Bail Application No.34 of 2021 under Section 438 of the Code of Criminal Procedure. The learned Special Judge, Majalgaon has rejected that application on 06.02.2021 by

holding that there is bar under Section 18 of the Atrocities Act. Hence, this appeal under Section 14-A of the Atrocities Act.

3. Heard learned Advocate Mr. Pramod Muley for the appellant, learned APP Mr. N. T. Bhagat for respondent No.1 and learned Advocate Mr. N. R. Thorat (appointed) for respondent No.2. In order to cut short, it can be said that all of them have made submissions in support of their respective contentions.

4. Perusal of the FIR lodged by the informant would show that she got married about two months prior to the FIR dated 24.01.2021 and she was residing with her husband, parents-in-laws and brother-in-law. When she was doing her household work between 11.00 a.m. to 12.00 p.m. on 24.01.2021, she went behind the house for washing clothes, at that time, she found one person near the wall of her house. That person came near her by concealing his person and suddenly appeared before her. She states that he had unroped himself and then tried to hug. She ran from that place to a nearby area where the construction of the house of the relative of her husband was going on and then gave a phone call to her brother-in-law. After her brother-in-law asked her to describe that person, she told that he is Muslim. Then she says that her brother-in-law asked their neighbour Mujed Shaikh as to who is such person, then

said Mujed Shaikh disclosed the name of present applicant. The informant says that thereafter her mother-in-law went to the house of the applicant and brought the applicant in front of the informant. Informant identified him and then she went to police station to lodge report.

5. The contents of the FIR would then show that though she is stating that she is a member of Scheduled Caste, yet, the FIR lacks in attributing the knowledge of the present applicant that the informant is a member of the Scheduled Caste. Unless the present applicant had the knowledge that the informant was member of a particular caste and with that intention only the offence was committed, there is no question of attributing any provisions under the Atrocities Act. The learned Special Judge, under the Atrocities Act, Majalgaon, failed to consider this important aspect, which is the mandatory requirement of attracting any offence described under Section 3 of the Atrocities Act.

6. As regards the offence under Indian Penal Code is concerned, the physical custody of the applicant is not required.

7. As aforesaid, there is *prima facie* case made out to show that offence under the Atrocities Act are not made out against the present applicant and, therefore, there was no question of bar under Section 18

of the Atrocities Act in view of decision of the Hon'ble Apex Court in ***Prathvi Raj Chauhan Vs. Union of India and others [AIR 2020 SC 1036]***, wherein it has been observed :-

*“Concerning the applicability of provisions of section 438 Cr.PC, 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.”*

8. For the aforesaid reasons, the appeal deserves to be allowed.

Hence, the following order :-

### **ORDER**

- I) Appeal stands allowed.
- II) The order passed in Criminal Bail Application No.34 of 2021 by learned Special Judge/Additional Sessions Judge, Majalgaon, Dist. Beed on 06.02.2021 is hereby set aside.
- III) In the event of arrest of the appellant – Salman Bilal Qureshi in connection with Crime No.9 of 2021 registered with Wadawani Police Station, Dist. Beed for the offences punishable under Sections 354, 354-D of Indian Penal Code and under Section 3(1)(w)(ii) of the Atrocities Act, he be released on P. R. and S.B. of Rs.15,000/- each.
- IV) The appellant shall not indulge himself in any criminal activity.

V) He should remain present before the Investigating Officer on every Friday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.

VI) The fees of Advocate appointed for respondent No.2 is quantified at Rs.5,000/- to be paid by the High Court legal Services Authority, Sub Committee, Aurangabad.

**[SMT. VIBHA KANKANWADI, J.]**

scm