

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.164 OF 2020

- 1) Rajendra Anandrao Bonde,
Age 62 years, Occupation Retired
Circle Officer,
R/o Shrirang colony, Deopur,
Dhule Tq. Dist. Dhule.
- 2) Suresh Suklal Patil,
Age 62 years, Occupation Retired
Talathi,
R/o Shivshakti Colony, Chittod Road,
Dhule Tq. Dist. Dhule.

...Appellants
(Original Accused No.8,9)

VERSUS

- 1) The State of Maharashtra,
Through Dhule Taluka Police Station
Tq. Dist. Dhule.
- 2) Prashant Bhuraji Ahire,
Age 38 years, Occupation Advocate,
R/o Plot No.21, Ganesh Colony,
Sakri Road, Dhule Tq. Dist. Dhule.

...Respondents
(Respondent No.2- Orig.informant)

.....

Advocate for Appellants: Mr.S.S. Jadhav h/f Mr. A. D. Mane
APP for Respondent No.1-State : Mr. A. V. Deshmukh
Advocate for Respondent No.2: Mr. A. S. Savale

.....

WITH
CRIMINAL APPEAL NO.171 OF 2020

- 1) Ravindra Popat Mali,
Age 38 years, Occupation Business,
- 2) Popatrao Lotan Mali,
Age 62 years, Occupation Agril.,

Both R/o At Post Ner
Tq. And Dist. Dhule.

- 3) Santosh Dashbhau Karve,
Age 38 years, Occupation Tuition,
R/o Akkalkuwa Tq. Akkalkuwa
Dist. Nandurbar.

...Appellants
(Original Accused No.5 to 7)

VERSUS

- 1) The State of Maharashtra,
Through Dhule Taluka Police
Station, Tq. Dist. Dhule.
- 2) Prashant Bhuraji Ahire,
Age 38 years, Occupation Advocate,
R/o Plot No.21, Ganesh Colony,
Sakri Road, Dhule Tq.Dist. Dhule.

...Respondents
(Respondent No.2- Orig.informant)

.....

Advocate for Appellants: Mr. S. S. Jadhav h/f
Mr. M. V. Bhamre

APP for Respondent No.1-State : Mr. A. V. Deshmukh
Advocate for Respondent No.2: Mr. A. S. Savale

.....

WITH
CRIMINAL APPEAL NO.170 OF 2020

- 1) Deepak Vitthal Khalane,
Age 50 years, Occupation Service,
- 2) Pravin Vitthal Khalane,
Age 46 years, Occupation Business,

Both R/o Sheetal Society, Takli
Road, Nashik.

- 3) Prakash Bhagwan Khalane,

Age 73 years, Occupation Tuition,

- 4) Vishal Prakash Khalane,
Age 43 years, Occupation Govt.
Service,

No.3 and 4 R/o Gorakshnagar,
Dindori Road, Nashk.

...Appellants
(Original Accused No.1 to 4)

VERSUS

- 1) The State of Maharashtra,
Through Dhule Taluka Police
Station, Tq. Dist. Dhule.
- 2) Prashant Bhuraji Ahire,
Age 38 years, Occupation Advocate,
R/o Plot No.21, Ganesh Colony,
Sakri Road, Dhule Tq.Dist. Dhule.

...Respondents
(Respondent No.2- Orig.informant)

.....

Advocate for Appellants: Mr.S.S.Jadhav h/f Mr. A.D.Mane
APP for Respondent No.1-State : Mr. A. V. Deshmukh
Advocate for Respondent No.2: Mr. A. S. Savale

.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
22-03-2021.**

**Date of Pronouncing The Order :
27-04-2021.**

JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, the appeals are **admitted**.

3. By consent, the appeals are taken up for final disposal.
4. All these appeals have been filed by the appellants who have been added as an accused in Crime No.04 of 2020, registered with Dhule Taluka Police Station, District Dhule, on 04-01-2020, for the offences punishable under Section 3 (1) (5) (8) (9) (13) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The said First Information Report has been lodged by the present respondent No.2. All the appellants had approached the learned Special Judge for anticipatory bail under Section 438 of Code of Criminal Procedure by filing Criminal Bail Applications No.28 of 2020, No.27 of 2020, No.26 of 2020, and after hearing all the concerned parties, the learned Special Judge has rejected all those applications on 04-02-2020. Hence, present appeals have been filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act') challenging the said orders of rejection of their applications for anticipatory bail.
5. Heard learned Advocate Mr. S. S. Jadhav holding for Mr. A. D. Mane and Mr. M. V. Bhamre for appellants, learned Additional Public Prosecutor Mr. A. V. Deshmukh and learned Advocate Mr. A. S.

Savale for respondent No.2- original informant.

6. It has been vehemently submitted on behalf of the appellants that the appellants have been falsely implicated by the respondent No.2 and it is the out come of the longstanding litigation between them. There are also other criminal cases filed between the appellants and the respondent No.2. It is alleged that the incident giving rise to the alleged offence occurred between 2012 to 2014, however the private complaint i.e. Miscellaneous Criminal Application came to be filed by the respondent No.2 in 2018 that is after delay of about four years, that delay has not been explained at all by the respondent No.2 in his complaint. Taking into consideration the said delay and also the fact that the respondent No.2 himself is an Advocate by profession, it raises doubt regarding the filing of such private complaint. It can be seen that the said complaint has not been filed with bona fide intention but just only to harass the appellants. The custodial interrogation of the appellants is absolutely not required. The learned Special Judge erred in holding that prima facie case has been made out under the Atrocities Act and, therefore, the applications filed by the appellants for anticipatory bail were barred under Section 18 of the Atrocities Act.

Learned Advocate for the appellants, therefore, prayed for setting aside the impugned orders and grant of anticipatory bail to the appellants. He also submitted that some of the accused persons are the government officers who were holding the post of Talathi and Sub-Divisional Officer, how they could had intention to commit any offence merely because the complainant/ respondent No.2 is belonging to a particular caste, this aspect has not been considered by the learned Special Judge. So also as regards the other accused persons are concerned, they are fighting for their rights in the Courts of Law and it cannot be taken as the act of intentionally restraining the member of Scheduled Caste or Scheduled Tribe from enjoying his land with the sole reason that he is belonging to a particular caste. Therefore, there was no bar for the entertainment of the applications, so also there is no bar for entertaining the appeals.

7. Per contra, the learned Additional Public Prosecutor as well as learned Advocate for respondent No.2 vehemently submitted that perusal of the First Information Report and the private complaint that was lodged with the Special Judge would show that the accused No.1 to 3 had conspired with accused No.8 and 9 who were the

Government Officers and restrained the respondent No.2 from enjoying his property. In fact, when respondent No.2 had submitted an application with accused No.8 and 9 in April 2012 that his name should be entered in 7/12 extract on the basis of the sale deed, they had no authority to object and make a remark that the said transaction is illegal. Illegality of a transaction can be decided only by the Civil Courts and not by the concerned revenue officers. Accused No.8 and 9 had co-operated accused No.1 to 7 so that they can harass the informant. All of them were having knowledge that the informant is a member of Scheduled Caste. All the details have been given in the private complaint that was filed by the respondent No.2 before the learned Special Judge. The learned Special Judge found that there is substance in the contents and, therefore, send the said complaint for investigation under Section 156 (3) of Code of Criminal Procedure. The learned Special Judge while rejecting the anticipatory bail has given detailed reasons and has clearly held that there is bar of Section 18-A of the Atrocities Act, there is no necessity to set aside those impugned orders.

8. At the outset, the fact is required to be considered is that the respondent No.2 is himself an Advocate, therefore it is presumed

that he has the knowledge of importance of lodging any complaint or First Information Report with the appropriate authorities without any delay. If we consider the private complaint filed by him of which photo copy has been provided, it can be seen that none of the accused persons are resident of Dhule proper, especially Ganesh Colony Sakri Road. Accused No.1 to 4 are resident of Nashik, accused No.5 and 6 are resident of Ner Tq. Dist. Dhule, accused No.7 is resident of Akkalpada Tq. Sakri Dist. Dhule, accused No.8 is resident of Deopur Tq. Dist. Dhule and accused No.9 is resident of Chittod Road Shivshakti Colony, Dhule Tq. Dist. Dhule. The said complaint further states that there were revenue proceedings between accused No.1 to 3 and the respondent No.2. According to the respondent No.2 he has purchased land Gut No.228 on 30-03-2012 situated at Khandlay Budruk Tq. Dist. Dhule in partnership. Now it has not been disclosed in the said complaint that as to who is his partner i.e. co-owner. If his co-owner is not a member of Scheduled Caste or Scheduled Tribe then the question arises, whether there could have been an intention on the part of the accused persons to harass the complainant only ? Question would still be open, as to whether the provisions of the Atrocities Act are applicable to the facts of the case or not ?

9. Perusal of the further contentions in the private complaint would show that the revenue officers had taken objection stating that the said transaction of purchase by the complainant is illegal. Now it has been tried to be contended on behalf of the respondent No.2 that the revenue authorities have no power to decide legality or illegality of any transaction. This Court does not completely agree with the learned Advocate appearing for the respondent No.2 on this aspect. There are certain acts which provide and casts duty on the revenue officers to see if a transaction i.e. transfer of land is as per the law or not and further power is also then given to them to refuse to take mutation entry and even declare such transactions as illegal. The private complaint is totally silent on the point as to what was the exact objection that was taken and under which provisions of law it was the contention of accused No.8 and 9 that the said transaction was illegal. Further the complainant i.e. respondent No.2 was at liberty to challenge the said note, order as per the provisions of law. Further it also appears that the accused persons i.e. accused No.1 to 7 approached the Courts of Law to get their grievances redressed, definitely those litigation are still pending. When a person takes legal recourse then unless it is proved that it is with mala fide intention, it cannot be prematurely held that such

litigation is false. At present it appears that there is RTS Appeal No.13 of 2012, Civil Suit No.03 of 2013 and RTS Appeal No.80 of 2013 pending before the concerned authorities. The complainant has also thereafter made allegations that the accused persons have made certain erasers or manipulations in the revenue record. The documents produced on record show that one criminal case on the basis of First Information Report 23 of 2013 dated 26-02-2013 lodged by one Dilip Magan Mistari was filed before Judicial Magistrate First Class, Dhule under Section 193, 417, 420, 468, 471, 504, 506 read with 34 of the Indian Penal Code, the investigation is complete and charge-sheet is filed vide Regular Criminal Case No.330 of 2013. If we consider the contents of the said First Information Report, the informant in that case i.e. Dilip Magan Mistari appears to be the co-owner, whose reference has been made in the earlier paragraphs. In his complaint it appears that there is absolutely no whisper that the said act has been done of which the reference is again taken by the present respondent No.2 in his present complaint on the count that the present complainant is a member of a particular caste and that is why that offence was not under the Atrocities Act. One more Criminal Complaint bearing No.1100 of 2018 appears to have been filed by the present

respondent No.2 against four persons i.e. Dipak Vitthal Khalane, Pravin Titthal Khalane, Prakash Bhagwan Khalane and Rajendra Anandrao Bonde who are also made as an accused in present case, but that private complaint is only under Section 193, 196, 198, 199, 200, 209, 211, 420, 465 read with 34 of the Indian Penal Code. There the complainant i.e. present respondent No.2 had not invoked any of the offences under the Atrocities Act. At the cost of repetition it can be said that the contents of that complaint are almost same which are there in the present complaint which was filed before the learned Special Judge vide Miscellaneous Criminal Application No.997 of 2018. Under these circumstances, definitely it can be said that the present First Information Report does not disclose prima facie offence under the Atrocities Act and / or the said First Information Report and the complaint prima facie appears to be a mala fide act and, therefore, there is no bar under Section 18-A of the Atrocities Act to consider the applications filed under Section 438 of Code of Criminal Procedure. Learned Special Judge totally erred in not considering factual aspects involved in the matter and it appears that the learned Special Judge only took note of the contents of the First Information Report in question i.e. Crime No.04 of 2020. There are catena of Judgments now which clarify the legal

position. In *Prithviraj Chavan v. Union of India*, Writ Petition No.1015 of 2018, decided by Hon'ble Apex Court on 10-02-2020, it has been observed that,

"10. Concerning the applicability of provisions of Section 438 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."

Therefore, when the accused persons were following legal path to have their grievance redressed, they cannot be put to peril by asking them to go behind bar on the count that the contents of the First Information Report are disclosing offence under Atrocities Act. The background behind filing such complaint/ First Information Report is also then required to be considered. No doubt the power of releasing an accused under Section 438 of Code of Criminal Procedure is the exceptional power and has to be used sparingly. The cases in which a law abiding citizen is adopting legal procedure, then such person/ persons deserves to be protected. Hence, the appeals deserve to be allowed, accordingly they are allowed as

follows :

ORDER

- 1) All the appeals are hereby allowed.
- 2) The impugned orders dated 04-02-2020, passed in Criminal Bail Applications No.28 of 2020, No.27 of 2020, No.26 of 2020, by learned Special Judge/ Additional Sessions Judge, Dhule, are hereby set aside. The said applications stand allowed.
- 3) The interim order passed by this Court on 07-02-2020, is hereby confirmed. In the alternative, if the appellants are not formally arrested, in the event of arrest of the appellants / accused Rajendra Anandrao Bonde, Suresh Suklal Patil, Ravindra Popat Mali, Popatrao Lotan Mali, Santosh Dashbhau Karve, Deepak Vitthal Khalane, Pravin Vitthal Khalane, Prakash Bhagwan Khalane, Vishal Prakash Khalane, in Special Case No.151 of 2020, pending before learned Special Judge/ Additional Sessions Judge, Dhule, they be released on PR and SB of Rs.15,000/- each (fifteen thousand).
- 4) The appellants shall not indulge in any criminal activity and they shall not tamper with the evidence of prosecution in any manner.

**(SMT. VIBHA KANKANWADI)
JUDGE**

vjg/-