

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

CRIMINAL APPEAL NO.212 OF 2021

Ram S/o. Kishan More,
Age : 24 years, Occu : Education,
R/o. Manna Umerga,
Tal. Udgir Dist. Latur.

... APPELLANT

VERSUS

1. The State of Maharashtra
through Police Station Officer,
Wadhwana Police Station
Tq. Udgir Dist. Latur.
2. Pooja Ramchandra Kawadekar
Age : 19 years, Occu : Education
R/o. Manna Umerga,
Tal. Udgir Dist. Latur

... RESPONDENTS

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Advocate for Appellant : Mr. Kudle Dhanaji S.
APP for Respondent/State : Mrs. R.P. Gaur
Advocate for Respondent No.2 : Mr. B.V. Ghodekar and V.B. Kulkarni

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CORAM : MANGESH S. PATIL, J.

DATE : 27.07.2021

PER COURT :

This is an Appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as Atrocities Act), impugning the order rejecting application of the appellant for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Crime No.30/2021 registered with Wadhwana Police Station, District Latur for the offences

punishable under Sections 354A, 143, 323, 504, 506 of the Indian Penal Code and under Section 3(1)(w)(ii) of the Atrocities Act and under Section 135 of the Maharashtra Police Act, 1951.

2. I have heard the learned advocate for the appellant, learned APP and the learned advocate for the respondent No.2

3. The allegations in nutshell are to the effect that the informant who is a girl aged 19 years was passing by the road on feet along with her paternal aunt and cousin. Couple of motorcycle riders arrived there, one of them molested her and when the alarm was raised they fled from the spot. It is then alleged that when her paternal uncle Subhash tried to accost these offenders they started assaulting him. One of them made a phone call whereupon couple of boys arrived there on motorcycle. The appellant was one of them and it is thereafter that all the four persons assaulted Subhash and the matter was intervened by one Arvind Kawdekar and Dyaneshwar Kawdekar. Thereafter all the four left by threatening her. On inquiry she could ascertain their identity and alleges that in spite of being aware about her caste being a scheduled caste they had molested her and assaulted Subhash.

4. It is quite apparent that the incident involves two episodes. In the first episode couple of boys riding one motorcycle had abruptly arrived and molested the informant and while fleeing from the spot they assaulted Subhash. It is then alleged that one of them then made a phone call and it is thereafter that the appellant along with the fourth accused arrived on a

bullet and thereafter all the four assaulted Subhash. It is thus quite clear that as far as the act of molestation is concerned the appellant is not directly involved. There is also no material to hint about any prior meeting of mind. On the contrary the appellant is alleged to have arrived at the scene having been called on telephone call by one of the two boys who were involved in the first episode. If this be so there is every room to doubt as to if even the appellant can be involved in a crime punishable under Section 3(1)(w)(ii) of the Atrocities Act.

5. The learned APP informs that subsequently even Section 3(2)(va) of the Atrocities Act has been included. However, in my considered view in order to invoke Section 3(1)(w)(ii) and 3(2)(va) of the Atrocities Act, knowledge on the part of the offenders about the victim being a person belonging to a scheduled caste or a scheduled tribe is utmost necessary. However, the FIR except the last vague and omnibus statement attributing such knowledge, is absolutely silent about this aspect. Interestingly, when she did not know any of these four assailants one cannot comprehend as to how she could be able to vouch for their knowledge about her caste.

6. Even the injured Subhash who happens to be the paternal uncle of the informant, in his statement under Section 161 of the Code of Criminal Procedure has not stated about the knowledge on the part of the appellant as to his being belonging to a scheduled caste.

7. It is in view of such state of affairs, when *prima facie* the offences under the Atrocities Act cannot be made out from the papers of the

investigation, the bar under Section 18 and 18-A of the Act would not be attracted as is laid down in the case of **Prathviraj Chauhan Vs. Union of India and Anr.; (2020) 4 SCC 727**.

8. In view of the above state of affairs, the impugned order refusing to grant anticipatory bail is clearly illegal. The Appeal deserves to be allowed.

9. The Appeal is allowed. The impugned order is quashed and set aside. The ad-interim relief granted by the order dated 20.04.2021 stands confirmed with the same terms and conditions subject to a clarification that the condition as regard attending the concerned Police Station shall cease on submission of a final report by the Investigation Officer.

(MANGESH S. PATIL, J.)