

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 260 OF 2021

Sunil Prataprao Thakre,
Age : 50 years, Occu. Business,
R/o Row House No.83, Gat No.74,
Kasliwal Marwal West,
Beed bypass Road, Satara Parisar,
Aurangabad

APPELLANT
(Orig. Accused No.1)

VERSUS

1. The State of Maharashtra
2. Gaurabai Babulal Jatwe,
Age : 60 years, Occu. Social Worker,
R/o Lions Club Colony, Galli No.6,
Mukundwadi, Aurangabad

RESPONDENTS
(Respdt. No.2 – Orig.
Informant)

AND

CRIMINAL APPEAL NO. 218 OF 2021

Kisan s/o Murlidhar Bhade,
Age : 70 years, Occu. Business,
R/o Plot No.9, Gut No. 88,
Shri Samarth Gajanan Housing Society,
Near High Court Colony, Satara Parisar,
Aurangabad, District Aurangabad
Aurangabad

APPELLANT

VERSUS

1. The State of Maharashtra,
through Police Station, Jinsi,
Aurangabad
2. Sau. Gaurabai w/o Babulal Jatve,
Age : 60 years, Occu. Social Work,
R/o Lions Club Colony, Lane No.6,
Mukundwadi, Aurangabad

RESPONDENTS

Mr. Joydeep Chatterji, Advocate for the appellant in
Criminal Appeal No.260/2021

Mr. Mangesh R. Jadhav, Advocate for the appellant in
Criminal Appeal No.218/2021

Mr. R.B. Bagul, A.P.P. for the respondent/State

Mr. V.B. Patil, Advocate for respondent No.2 in both appeals

CORAM : MANGESH S. PATIL, J.

DATE : 03.08.2021

ORAL JUDGMENT :

Heard.

2. **Admit.**

3. With the consent of learned Advocates for the parties and the learned A.P.P., heard finally at the stage of admission.

4. These are the appeals under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act", for short), being aggrieved and dissatisfied by the rejection of their applications under Section 438 of the Code of Criminal Procedure seeking anticipatory bail in connection with Crime No.47 of 2021, registered with Jinsi Police Station, District Aurangabad on 24.02.2021 for the offence punishable under Section 354 read with Section 34 of the Indian Penal Code and Sections 3(1)(w) and 3(1)(x) of the Atrocities Act.

5. In nutshell, the allegations, as can be made out from the papers, are to the effect that the appellants as also the informant were present at a meeting of a Cooperative Bank wherein during the meeting, appellant Sunil is alleged to have uttered insulting words on caste-lines in order to prevent her from participating in the meeting and speaking out. It is further alleged that after the meeting was over when she was proceeding along the road, both the appellants accosted her and insulted her by hurling abuses on caste-lines and even molested her. She immediately approached the police with a complaint but no cognizance was taken. She had to pursue the matter with the senior police officers but invain. Finally, she filed Criminal Application and the learned Special Judge was pleased to direct an investigation under Section 156(3) of the Code of Criminal Procedure and that is how the offence was registered.

6. The learned Advocates for the appellants would vehemently submit that there is enormous and unexplained delay in initiating the criminal proceeding. The incident is alleged to have taken place in the month of November 2019 and even the private complaint was filed in the month of January 2021, it is thereafter that the offence was registered pursuant to a direction under Section 156(3) of the Code of Criminal Procedure. Thus, according to them, there is every room to believe that the appellants are being falsely implicated with an ulterior motive since they were opposing one of the Directors of the Bank and respondent No.2 –

informant happens to be a member of his fraction.

7. The learned Advocates would then submit that there is an element of concoction as well inasmuch as in the initial grievances made by respondent No.2 in writing, she tried to attribute the incident only to appellant Sunil and there was no whisper as far as the other appellant Kisan is concerned. Even the allegations in the initial complaint are vague and omnibus. No specific allegations have been attributed. Though the word is used to describe the molestation in vernacular, the details of which are wanting. It is, therefore, highly doubtful if the offences under the provisions of the Atrocities Act can be made out.

8. The learned Advocates would then submit that there is no material to attribute knowledge on the part of the appellants about the caste of respondent No.2. Both the appellants have been protected by way of ad-interim relief. There are no allegations about there being any breach of the terms and conditions. Since the offences under the provisions of the Atrocities Act cannot be made out, the bar under Sections 18 and 18-A of the Act would not be applicable as laid down in the case of ***Prathviraj Chauhan Vs. Union of India and others; (2020)4 SCC 727*** . The appellants have already been protected by ad-interim anticipatory bail. They are ready to cooperate the Investigating Officer even hereafter. The learned Special Judge has erred in appreciating the aforementioned facts and circumstances and illegally refused to grant anticipatory bail to the appellants.

9. The learned A.P.P and the learned Advocate for respondent No.2 would oppose the appeals. They would submit that at this juncture, there is enough material to point out that since inception, respondent No.2 was trying to put up her grievance in writing. Though there is delay in setting the criminal law in motion, there is material to reveal that she was taking steps to initiate the prosecution. She deserves to be extended an opportunity to explain away the delay. Since there are prima facie allegations and material sufficient to make out the necessary ingredients for the offences under the Atrocities Act, in view of the bar under Section 18 and 18-A of that Act, as laid down in the case of ***Prathviraj Chauhan*** (supra), the appellants are not entitled to claim anticipatory bail. The learned Special Judge has rightly invoked the provisions while refusing to grant anticipatory bail to the appellants.

10. I have carefully gone through the papers of investigation. Since it is a matter of grant of anticipatory bail in a proceeding under the provisions of the Atrocities Act, the enquiry needs to be restricted in ascertaining if prima facie the ingredients for constituting the offences under the Atrocities Act are made out as laid down in the case of ***Prathviraj Chauhan*** (supra). It is only if a case can be made out prima facie that the bar under Sections 18 and 18-A of the Atrocities can be made applicable and not otherwise.

11. Bearing in mind this proposition, if one examines the papers, it is quite apparent that on the very date of the incident, respondent No.2 had tried to set the criminal law in motion by addressing a letter to the concerned police. True it is that it is after a long sabbatical that she approached the Special Court by filing an application soliciting a direction under Section 156(3) of the Code of Criminal Procedure. Though it would be for the prosecution to explain this delay, at this juncture, one can simply point out that on the very date of the application i.e. 29.11.2019, she had specifically made allegations atleast against appellant Sunil not only in respect of hurling abuses on caste-line but also regarding molestation. It is in view of such state-of-affairs, in my considered view, this is not a stage where any scrutiny can be undertaken objectively to describe if the delay can be explained away.

12. The fact remains that since inception, respondent No.2 has been putting up her grievance against appellant Sunil for having insulted her by hurling abuses on caste-lines, which is sufficient to make out the ingredients for constituting the offences as against him. Therefore, no fault can be found with the conclusion drawn by the learned Special Judge that the bar under Sections 18 and 18-A of the Atrocities Act would be applicable as against appellant Sunil.

13. However, so far as the other appellant – Kisan is concerned, not even a cursory reference to his presence much less taking part in the episode

in which appellant Sunil is alleged to have hurled abuses on caste-line at respondent No.2 and molested her can be found in the initial complaint dated 29.11.2019. For that matter, even in the second attempt by respondent No.2, to file a similar complaint with the letter dated 28.12.2020, she has not referred to much less attributed any role to appellant Kisan. Not only this, but in the private complaint, she has not made any attempt to attribute the role against appellant Kisan and only appellant Sunil has been targetted. Considering such state-of-affairs, it cannot be said that the ingredients for constituting the offences under the Atrocities Act can be made out against appellant Kisan. The learned Special Judge seems to have overlooked all these aspects and readily refused to grant anticipatory bail to him by invoking the provisions under Sections 18 and 18-A of the Atrocities Act.

14. In the result, Criminal Appeal No.260 of 2021 fails and is dismissed. The ad-interim anticipatory bail granted to appellant Sunil Prataprao Thakre by order dated 25.05.2021 is cancelled.

15. Criminal Appeal No.218 of 2021 is allowed. The impugned order to the extent of appellant Kisan Murlidhar Bhade is quashed and set aside. The ad-interim anticipatory bail granted to him by order dated 06.05.2021 stands confirmed with the same terms and conditions.

[MANGESH S. PATIL]
JUDGE

