

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

CRIMINAL APPEAL NO.300 OF 2021

1] GAURAV PRAKASH CHAUDHARI
2] SHUBHAM RAVIKUMAR JADHAV
3] KASHINATH SOMA GURAO

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. Chatterji Joydeep
PP for Respondents/State: Mr. D.R. Kale
Advocate for Respondent No.2 : Mr. A.D. Sonar

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CORAM : MANGESH S. PATIL, J.

DATE : 13.07.2021

PER COURT :

This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after the Atrocities Act) being aggrieved and dissatisfied by the rejection of the Application for bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.508/2021 by the order dated 14.06.2021.

2. The FIR has been lodged by a public servant alleging that while she was discharging her official duty and in the process was intercepting vehicles so as to ascertain if the royalty was paid, a dumper of the appellant No.1 being driven by one of the other two appellants was similarly intercepted. He was unable to produce any receipt but made a phone call. The appellant No.1 arrived there in his vehicle being driven by the third

appellant and it is thereafter that the words were exchanged and she alleges about the appellant No.1 having molested her, used criminal force with intention to deter her from discharging her public duty. She reported the matter to police and the offence was registered. The appellants were arrested on the very day. They submitted an application for bail which has been rejected by the Special Judge. Hence this appeal.

3. The learned advocate Mr. Chatterji for the appellants would submit that this being a matter of grant of regular bail, bar contained under Sections 18 and 18 A of the Atrocities Act does not come into play. The appellants have been in jail for sufficiently long period which must have enabled the Investigating Officer to complete the investigation. Though there are allegations about use of criminal force and molestation, in fact the version of the appellant No.1 is otherwise. He had promptly lodged a report against the informant and other revenue officers regarding intimidation. Even that report was lodged on the very same day but no action pursuant thereto has been taken. Whatever may be the reason, the major part of the investigation must have been concluded by now. The vehicle has been recovered as also the mobile phones wherein the incident is allegedly video-graphed. The appellant No.1 is a people's representative being a councillor. He may not be allowed to be detained in the crime the punishment for which is maximum of five years. The appellants may be put to whatever condition as deemed fit and may be granted bail.

4. The learned PP and the learned advocate for the respondent

No.2 original informant submit that the offence is serious and it is still under investigation. In fact there are criminal antecedents against the appellant No.1. Even after commission of the crime the informant has reasonable apprehension of threats and harassment. Since the investigation is yet to be completed, releasing the appellants on bail is likely to prejudice the Investigating Officer.

5. I have carefully considered the rival submissions, the papers of investigation and the impugned order.

6. Suffice to bear in mind that the appellants are seeking regular bail under Section 439 of the Code of Criminal Procedure and consequently the parameters for grant of bail would stand on a different footing than anticipatory bail, against the grant of which there is a bar contained in Sections 18 and 18 A of the Atrocities Act.

7. Admittedly, the appellants have been arrested on 05.06.2021. As can be appreciated from the papers of the investigation, the dumper and the mobile phones in which the incident is stated to have been recorded have been recovered. Therefore as far as the aspect of recovery is concerned, custodial interrogation of the appellants does not seem to be necessary.

8. Admittedly, statements of the informant has been recorded under Section 164 of the Code of Criminal Procedure. Similarly statement of Talathi Vaishali Pratap Kakulde has also been recorded under Section 164 of the Code of Criminal Procedure. If that be so, there is no question of now

there being any tampering.

9. Though it is a serious matter in as much as criminal force is used against a woman public servant with an intention to restrain her from discharging her duty and the incident also involves allegations regarding molestation, the maximum punishment which can be meted out is five years of imprisonment. The appellants are in jail since 05.06.2021. As is mentioned above most of the investigation is already concluded. Needles to state that the trial is not likely to conclude in the near future rather the matter is still at the stage of investigation.

10. So far as the apprehension being entertained by the informant and by the prosecution, it would be apposite to impose some stringent condition to allay the fear being expressed. It is to be borne in mind that the learned Special Judge by the impugned order refused bail when the investigation was at a nascent stage. The impugned order was passed almost a month back. Obviously, since thereafter the investigation must have progressed and even the statements of the material witnesses have been recorded under Section 161 and/ or 164 of the Code of Criminal Procedure. It is in view of such peculiar state of affairs, in my considered view, the Appeal deserves to be allowed and the appellants released on bail subject to suitable conditions.

11. The Appeal is allowed. The impugned order is quashed and set aside. The appellants be released on bail in connection with Crime No.508/2021 registered with Nandurbar City Police Station, Dist. Nandurbar

for the offences punishable under Section 353, 332, 354, 323, 504, 506, 509 read with Section 34 of the Indian Penal Code and under Sections 3(1)(w), 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on their executing personal recognizance for an amount of Rs.25,000/- (Rs. Twenty Five Thousand only) each and furnishing a solvent surety in the like amount each subject to following conditions:

- a) They shall not enter into the Municipal limits of Nandurbar till conclusion of the investigation and submission of the final report of the Investigating Officer, except when called upon by him.
- b) They shall not directly or indirectly try to contact the informant or the witnesses and shall not indulged in any crime.

12. Bail before the trial court.

(MANGESH S. PATIL, J.)