

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 323 OF 2021

1. Babasaheb Sampatrao Wagh,
Age : 50 years, Occu. Agriculture
2. Vinayak Sampatrao Wagh,
Age : 55 years, Occu. Agriculture
3. Manik Sampatrao Wagh,
Age : 45 years, Occu. Agriculture

All are r/o Gondegaon,
Tq. and District Jalna

APPELLANTS

(Orig. Accused Nos.1 to 3)

VERSUS

1. The State of Maharashtra
through Police Station Taluka Jalna,
District Jalna
2. Govind Ambadas Pakhare,
Age : 69 years, Occu. Agriculture,
R/o Gondegaon, Tq. & Dist. Jalna

RESPONDENTS

(Respdt. No.2 – Orig.
Informant)

Mr. J.J. Salunke, Advocate for the appellants
Mr. R.D. Sanap, A.P.P. for the respondent/State
Mr. Amol S. Gandhi, Advocate for respondent No.2

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. This is an appeal 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 applications filed by the appellants under Section 438 of the Code of Criminal Procedure seeking anticipatory bail in connection with Crime No.232 of 2021, registered with Jalna Taluka Police Station, District Jalna for the offences punishable under Sections 324, 323, 327, 336, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(g) and 3(1)(s) of the Atrocities Act.

5. The allegations, as can be made out from the FIR and the police papers, are to the effect that respondent No.2 belongs to a Scheduled Caste and possesses a land Gut No.162. There has been a dispute between the appellants and him in respect of possession over that land. The civil dispute has been going on since long. Since the appellants were obstructing his possession, he had filed a complaint with police on 25.05.2021. As per the instructions of the superior police officer, couple of police officers namely Mr. Wadate and Mr. Doiphode were sent for spot inspection. It is then alleged that the appellants were present there as also the respondent No.2 and his

family members. The two groups indulged in a scuffle. The appellants allegedly hurled abuses on caste-lines and a gold ornament was snatched from the neck of his wife. It is, therefore, alleged that the appellants committed the aforementioned offences.

6. The learned Advocate for the appellants would take me through the papers showing that respondent No.2 has been filing similar complaints not only against the appellants, but even against other villagers. One such complaint has also been found to be false one and final report to that effect was filed by the concerned police officer. This is yet another attempt by the informant to falsely implicate the appellants. There has been long standing civil dispute between the two sides. However, he has been taking advantage of his being a Scheduled Caste for giving a colour of criminality by invoking the provisions of the Atrocities Act. The learned Advocate would, therefore, submit that all the necessary ingredients for constituting the offences under the Atrocities Act cannot be made out and consequently, in view of the decision in the case of *Prathviraj Chauhan Vs. Union of India and others; (2020)4 SCC 727*, the bar under Sections 18 and 18-A of the Atrocities Act would not be applicable. Custodial interrogation of the appellants is not necessary and they may be granted anticipatory bail, which the learned Special Judge has illegally refused.

7. The learned A.P.P and the learned Advocate for respondent No.2 would oppose the appeal. They would submit that at this juncture, there is

enough material to disclose all the necessary ingredients for constituting the offences punishable under Sections 3(1)(g) and 3(1)(s) of the Atrocities Act and consequently, in view of the bar under Sections 18 and 18-A of that Act, the appellants are not entitled to claim anticipatory bail. The learned Special Judge has rightly rejected the application.

8. The learned A.P.P. and the learned Advocate for respondent No.2 would further point out that there has been a long standing civil dispute and an order was passed by the revenue authority in his favour holding him to entitle to protect possession. He had legitimately approached the police and pointed out that the appellants were bent upon to obstruct his possession. It is pursuant to his such grievance that Mr. Wadate and Mr. Doiphode were sent to the spot and the incident has taken place during that process. At this juncture, this much of material is sufficient to reveal complicity of the appellants in commission of the offences under the Atrocities Act and the appeal may be dismissed.

9. I have carefully gone through the papers.

10. It does appear that the two sides have been indulged in long standing civil dispute touching the extent of their possession over the disputed portion. It also appears that pursuant to a written complaint filed by respondent No.2 that Mr. Wadate, API and Mr. Doiphode, Police Naik were sent to the spot and the incident seems to have taken place in their presence.

It is pertinent to note that even respondent No.2 has been provided with a bodyguard, police constable R.D. Ambhore who was also present at the scene. Interestingly, Police Naik Doiphode has also simultaneously lodged an FIR on the basis of which Crime No.231/2021 is registered under Section 160 of the IPC and Section 56 of the Disaster Management Act.

11. It appears that in that FIR, it has been alleged that respondent No.2 himself tried to inflict injuries on himself and had even refused to take a notice under Section 149 of the Code of Criminal Procedure, which the appellants accepted. However, simultaneously, it is important to note that even a statement of police constable Ambhore, who is the bodyguard of respondent No.2 has been recorded under Section 161 of the Code of Criminal Procedure. Unlike FIR lodged by Police Naik Doiphode, Ambhore has stated about the appellants having assaulted respondent No.2 but conspicuously he has also stated that nobody had insulted respondent No.2 by hurling abuses on caste-lines.

12. It is in the backdrop of such state-of-affairs, it appears that it is only pursuant to a long standing dispute that the parties had indulged in the scuffle and prima facie there was no element of insult or annoyance being caused on caste-lines. In view of such a long standing dispute, there is a serious doubt as to if the offence under Section 3(1)(g) of the Atrocities Act can be made out when both the sides are before the Civil Court, asserting their possession over the disputed area. This is precisely what has been

observed and concluded in the case of *Hitesh Verma v. State of Uttarakhand and another; 2021 CRI.L.J.1*, holding that the offence under Section 3(1)(g) of the Atrocities Act was not involved in that case. The observations in that case are eloquent enough and clearly point out that when the persons are engaged in a civil dispute over possession of an immovable property, when they are already before the Civil Court, the offence under the Atrocities Act cannot be invoked.

13. In view of the above state-of-affairs, when the ingredients for constituting the offences under the Atrocities Act cannot be prima facie made out, the bar under Sections 18 and 18-A of the Atrocities Act would not come into picture as has been laid down in the case of *Prathviraj Chauhan* (supra).

14. The learned Special Judge does not seem to have indulged in and discussed all the aforementioned facts and circumstances and interestingly has not even invoked the bar under Sections 18 and 18-A of the Atrocities Act in so many words, while refusing to grant anticipatory bail to the appellants.

15. The appeal is allowed. The impugned order is quashed and set aside. In the event of arrest of the appellants in connection with Crime No.232 of 2021, registered with Jalna Taluka Police Station, District Jalna for the offences punishable under Sections 323, 323, 327, 336, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(g) and 3(1)(s) of

the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, they shall be released on bail on their executing personal recognizance for an amount of Rs.15,000/- (Rupees Fifteen Thousand) each and furnishing a solvent surety each in the like amount subject to following conditions:-

- (i) They shall attend the concerned Police Station on every Saturday starting from 07.08.2021 between 10.00 a.m. and 12.00 noon and shall cooperate the Investigating Officer till filing of the final report.
- (ii) They shall not tamper the evidence or influence the witnesses.
- (iii) Bail before the Trial Court.

[MANGESH S. PATIL]
JUDGE