

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

CRIMINAL APPEAL NO.560 OF 2020

- 1) Vijay s/o Ramu Chavan
Age: 40 Yrs. Occu. Agril.
R/o Ambu Naik Tanda, Khandavi
Tq.Georai Dist.Beed.
 - 2) Ramu @ Rameshwar s/o Prakash
Chavan.
(Appeal stood withdrawn as against
appellant No.2, vide order dated
27th Oct. 2020)
 - 3) Nitin s/o Uttam Chavan
Age: 22 Yrs., occ. Agril.
R/o as above.
- .. APPELLANTS**
(Orig.Accused No.9 and 16)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Georai
Dist. Beed.
 - 2) The Superintendent of Police,
Beed, Tq. & Dist. Beed.
 - 2) Santosh s/o Mohan Bhosle,
Age 32 years, Occupation Agri.,
R/o Ambu Naik Tanda, Khandavi
Tq.Georai Dist.Beed.
- .. RESPONDENTS**

... .

Adv.for Appellants : Mr.PP Mandlik, Adv. h/for Mr. Amol
S.Gandhi, .

APP for Resp.Nos.1 & 2 : Mrs. VS Choudhari

Adv.for Respondent No.3 : Mr. ZH Farooqui.(Appointed)

...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE :08-1-2021.

JUDGMENT :

1. Heard learned Advocate for appellants.
2. Since arguable points are raised, the appeal is Admitted.
3. By consent, the appeal is taken up for final disposal.
4. Appellants are original accused Nos.9 & 16 respectively.
5. The appeal is filed under Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. (hereinafter referred to as 'Atrocities Act' for the sake of brevity), to challenge the order dated 13th October, 2020 passed by learned Additional Sessions Judge / Special Judge, Beed, rejecting Misc. Criminal Application No. 675/2020 filed by the appellants under Section 438 of

Code of Criminal Procedure.

7. Heard learned Advocates and learned APP appearing for respective parties.

8. Perusal of the First Information Report, which has been lodged lodged by present respondent No.3 against as many as 24 persons would show that all of them had barged in "Pardhi Vasti" with deadly weapons, and it is stated that, without any inquiry, they started assaulting the person they could notice. They did not bother as to whether that person is gents, ladies or a small child. It is further stated that the informant was assaulted with a stick by accused Sudam Bhau Chavan. It is also stated that one Kajal has been severely beaten on her thigh. One Rukminbai sustained injury to her head. It has been contended that the informant belongs to Pardhi community and the accused persons are of Banjara community.

9. When the FIR shows that large number of persons

had attacked the informant, his family members and others, yet the FIR is silent regarding verbal exchanges those have been made. In fact, the FIR does not mention that any abuses/ insult was made to the informant or either of his family member in the name of his caste. The allegations about assault, at this stage, would disclose the offence under Section 324 of Indian Penal Code which is bailable. If at all it is to be connected to Section 3 (1) (r), 3 (1) (s), 3 (2) (va) of the Atrocities Act, then it will have to be shown by the prosecution that the said act was done by the mob only because the informant and his family members were of a particular caste or tribe. The FIR does not show the said fact, therefore *prima facie* offence under the Atrocities Act was not made out. There was absolutely no bar under Section 18 of the Atrocities Act for the learned Special Judge to entertain the said application under Section 438 of the Code of Criminal Procedure. We are guided by the catena of Judgments

of this Court as well as the Hon'ble Apex Court, especially vide pronouncement of *Prithviraj Chavan v. Union of India*, Writ Petition No.1015 of 2018, decided by Hon'ble Apex Court on 10-02-2020, wherein 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."

10. As the learned Special Judge has erred and the fact that the investigation appears to have been almost complete, further it is stated that the alleged weapons have been seized from the spot, the physical custody of the appellants is not required. The appeal therefore, deserves to be allowed.

11. Earlier, the interim protection has already been

granted to the respective appellants. That interim relief deserves to be made absolute. Hence, following order.

ORDER

- 1) The appeal is hereby allowed.
- 2) The order passed by learned Additional Sessions Judge, Beed, in Misc. Criminal Application No.675 of 2020, dated 13-10-2020, is hereby set aside. Said application stands allowed.
- 3) The ad-interim protection, granted by this Court earlier to appellants in Criminal Appeal No.560 of 2020 vide orders dated 27th October, 2020 is hereby confirmed and made absolute.
- 4) In the event of arrest of the appellants in connection with Crime No.420 of 2020, registered with Georai Police Station Tq. Georai Dist. Beed, for the offences punishable under Section 324, 323, 143, 147, 148, 149, 427 of Indian Penal Code, under Section 3 (1) (r), 3(1) (s),

3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the appellants be released on PR and SB of Rs.15000/- each (fifteen thousand).

5) The appellants shall not indulge in any criminal activity and nor they shall tamper with the evidence of prosecution in any manner.

6) The appellants shall attend the Police Station, Georai Tq. Georai Dist. Beed, on every Monday and Wednesday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet and shall co-operate with the investigation.

7) The fees of appointed Advocate ZH Farooqui, is quantified at Rs.5,000/- to be paid to him.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV