

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 397 OF 2021

1. Sukhdeo s/o Mahadu Aaher,
Age 64 years, Occupation Agri.,
2. Anita W/o Sukhdeo Aaher,
Age 60 years, Occupation Agri.,
3. Bhausahab s/o Kashinath Aaher,
Age 66 years, Occupation Agri.
All Resident of Nillod, Taluka Sillod,
District Aurangabad. .. APPELLANTS

VERSUS

1. The State of Maharashtra
2. Sharda W/o Sidhharth Shinde,
Age 35 years, Occupation Household,
Resident of Nillod, Taluka Sillod,
District Aurangabad. Ph: 9623807934 .. RESPONDENTS

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Mr. Abhaysingh K. Bhosle, Advocate for appellants
Smt. Geeta L. Deshpande, APP for respondent No. 1- State
Mr. Sangmitra Wadmare, Advocate for respondent No. 2

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CORAM : SURENDRA. P. TAVADE, J.

DATE : 22.09.2021

PER COURT :-

Being aggrieved and dissatisfied with the order dated 02-08-2021 passed by the learned Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Aurangabad, in Bail Application No. 1335 of 2021, the appellants have preferred this appeal.

2. It is contended by the appellants that they are prosecuted by Police of Wadod Bazar Police Station, District Aurangabad, for the offences punishable under Sections 354, 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code (IPC) and Sections 3(1)(r), 3(1)(s), 3(1)(w) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for the sake of brevity, hereinafter, referred to as “Atrocities Act”).

3. Respondent No. 2 – informant - Sharda w/o Siddharth Shinde has lodged First Information Report (FIR) against the appellants on 22-07-2021; wherein, it is alleged that on 18-07-2021 at about 2.00 p.m. when she was in her field, at that time appellant No.1 came there and disclosed that he wanted to purchase the said land. She also alleged that accused-appellant No.1 embarrassed and abused her over her caste. Similarly, he threatened the informant that he would kill her and her family members. However, anyhow she got rescued herself and returned to her house. It is further alleged that on 19-07-2021 at about 1.30 p.m. she along with her husband were in the field, at that time appellants came there and told them that they would purchase the said land. They also abused informant and her husband over their caste. Similarly, they threatened them that they would broke water supply and block the road. It is further alleged that appellant

No. 1 assaulted her husband, when she came to intervene the quarrel. The informant was assaulted by appellant No. 2. Appellant No. 3 assaulted the husband of informant. It is further alleged that the appellants abused them over their caste. Due to fear, the informant and her family members went to Aurangabad and, thereafter, they gave applications to Police; but, no action was taken. Ultimately, the FIR came to be registered on 22-07-2021.

4. On the basis of above allegations, learned counsel for the appellants submits that land adjacent to the land of informant was purchased by appellant No. 2 by registered sale deed dated 20-05-2021 from Samadhan, Dadarao, Saluba sons of Haribhau Shinde, Sanjay Haridas Shinde and Manisha Balu (Babu) Shinde. It is contended that the appellants purchased the land of Shinde family, therefore, the informant and her family members were having grudge against the appellants and there used to be frequent quarrels between them. It is further contended that appellant No.2 has also lodged report against the informant on 19-07-2021 and expressed fear that the appellants may be implicated in false case. It is further contended that there is delay in lodging the FIR, which is not explained. It is also contended that there is omnibus statement that the appellants abused informant and her family members over their caste. No specific allegations are

made against each of the appellants. Therefore, *prima facie*, no offence is made out against the appellants under the Atrocities Act. It is also contended that the Investigating Officer has not considered the same in its proper perspective. Similarly, the trial Court has also not considered the same and has erroneously passed the impugned order. There is need to interfere with the order of the trial Court.

5. On the other hand, learned APP for respondent No.1 submitted that on going through FIR, it *prima facie* appears that the offence is made out against the appellants under the Atrocities Act. She also submits that the informant had given applications to the Police Station, Wadod Bazar and the Superintendent of Police, Aurangabad, on 19-07-2021. She also submitted that the Police did not take prompt action on the applications of informant, therefore the informant had given complaint-cum-application to the Superintendent of Police, Aurangabad, against the Police Officer of Wadod Bazar Police Station on 19-07-2021. She also submits that after the incident, the informant and her family members frightened and they had gone to Aurangabad and meet the Superintendent of Police and lodged the FIR, so there is delay in lodging the FIR. She also submits that appellant no. 1 outraged the modesty of informant. Similarly, the informant and her husband were assaulted by appellants No. 1 and 3. She invited my

attention to the medical certificates of the informant and her husband. She also submits that on going through the FIR, it *prima facie* appears that offence under the Atrocities Act is made out. Therefore, the trial Court has rightly rejected the application. Hence, there is no need to interfere in the findings recorded by the learned trial Court.

6. Learned counsel for respondent No. 2 reiterated the contentions raised on behalf of learned APP. He also submits that offence under the Atrocities Act is made out against the appellants. There are specific allegations against the appellants in the FIR and in the statements of the witnesses, therefore, there is no need to interfere with the findings of the trial Court.

7. Heard learned counsel for appellants and respondent No. 2 and learned APP for the State. Perused the complaint, which was lodged on 22-07-2021, wherein, two incidents are narrated. According to informant, first incident occurred on 18-07-2021 at about 2.00 p.m. in her field, wherein, allegations are made against appellant No. 1 that he entered into her field and threatened and abused her over her caste. In the second incident, it is alleged that all the appellants entered into her field at about 1.30 p.m. and threatened her and her husband. Thereafter, appellants No. 1 and 2 assaulted her. Similarly, the appellants abused her and her husband over their caste.

8. So far as the first incident is concerned, there are allegations against appellant No.1 that he abused informant over her caste. As regards to the second incident, allegations are against appellant No.1 that he threatened the informant and her husband. Similarly, there are allegations that the appellants abused her over her caste. There are no specific allegations against appellant Nos. 2 and 3 that they abused informant and her husband over their caste or humiliated them. If the FIR is read as it is, it *prima facie* establishes that appellant No. 1 had outraged modesty of the informant and abused her over the caste. So far as appellant Nos. 2 and 3 are concerned, it is alleged that they had accompanied appellant No.1 in the field of informant on 19-07-2021 and they assaulted informant and her husband.

9. The informant and her husband were referred to medical examination. On perusal of injury certificates, it appears that the informant and her husband had suffered injuries. Therefore, *prima facie*, it appears that there was incident of assault on 19-07-2021 in the field of informant. So far as the offences under the Atrocities Act are concerned, there are specific allegations that appellant No.1 abused the informant over her caste. But, the said incident occurred in the field of informant when nobody was present there except the informant and

her husband. If provisions of Section 3(1)(r)(s) of the Atrocities Act read then it can be said that insults or humiliation must occur in any place within public view. In the present case, the offence alleged to have been occurred in the field of informant, where nobody had witnessed to the same. Therefore, it cannot be said that it had occurred in the place within public view. On going through the FIR, it can be said that there are allegations against appellant No.1 that he outraged modesty of informant. Therefore, *prima facie* there is material against appellant No.1 for the offence punishable under Section 3(1)(w)(i) of the Atrocities Act.

10. So far as appellants No. 2 and 3 are concerned, *prima facie* there is no material on record to establish that the appellants have committed offences under Sections 3(1)(r)(s), 3(1)(w)(i) and 3(2)(va) of the Atrocities Act. Therefore, there is no bar to consider the application of appellants No. 2 and 3. On this point, learned counsel for respondent No. 2 has relied upon the ratio laid down in the case of ***Vilas Pandurang Pawar and another versus State of Maharashtra and others*** reported in ***(2012) 8 Supreme Court Cases 795***, wherein, it is held that *if there is specific averments in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused are not entitled to anticipatory bail.*

In the present case, there are allegations against appellant No.1 under Sections 3(w)(i) and 3(2)(va) of the Atrocities Act, therefore, he is not entitled for anticipatory bail.

11. Learned counsel for respondent No.2 has also relied upon the ratio laid down in the case of *Prathaviraj Chauhan Versus Union of India and others (Writ Petition @ No. 1015 of 2018 decided on 10th February 2020)*, wherein, it is held that *prima facie if offence is made out under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 there would be bar under Section 18-A of the Atrocities Act for entertaining application under Section 438 of Cr.PC.*

12. I have already held that on going through the FIR *prima facie* there is material against appellant No.1 that he outraged modesty of informant and abused her over her caste and humiliated her. Similarly, there is allegation against appellant No. 1 that he assaulted informant and her husband, therefore, *prima facie* there is material against appellant No. 1 implicating him for the offences under the Atrocities Act, hence, there is bar to entertain his application under Section 438 of the Code of Criminal Procedure. Therefore, appellant No.1 is not entitled for the relief claimed in the appeal.

13. So far as appellant Nos. 2 and 3 are concerned, *prima facie*, there is no material against them to implicate them under the provisions of Atrocities Act, therefore, they are entitled for bail, in the event of their arrest, in connection with crime in question. Hence, I proceed to pass following order:

ORDER

- (i) Criminal appeal is partly allowed.
- (ii) Criminal appeal to the extent of appellant No. 1 is rejected.
- (iii) Criminal appeal to the extent of appellants No.2 and 3 is allowed.
- (iv) Appellants No. 2 and 3 are ordered to be released on anticipatory bail, in the event of their arrest, in connection with crime No. 0169 of 2021 registered with Wadod Bazar Police Station, District Aurangabad, for the offences punishable under Sections 354, 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(w) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on execution of PR and SB of Rs. 15,000/- each with following conditions -
 - (a) Appellants No. 2 and 3 shall attend the concerned Police Station every day between 10.00 a.m. to 12.00 noon from 23-09-2021 till 09-10-2021
 - (b) Appellants No. 2 and 3 shall co-operate the Police in investigation.

- (c) Appellants No. 2 and 3 are also directed not to tamper with the prosecution witnesses in any manner whatsoever.
- (d) Learned APP is directed to communicate this order to the concerned Police Station.
- (e) The parties to act upon the authenticated copy of this order.
- (v) Criminal appeal stands disposed of, accordingly.

Sd/-

(SURENDRA. P. TAVADE)
JUDGE

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