

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO.44 OF 2021

APPELLANT : Smt Preeti Mangesh Mankar,
Age : 32 yrs, occ- housewife,
R/O- Ward No.2, Khairi, Tah : Kamptee,
Dist: Nagpur.

--VERSUS--

NON-APPELLANTS : 1. State of Maharashtra,
Through its Police Station Officer,
Juni Kamptee Police Station, Kamptee,
Tah : Kamptee, Dist : Nagpur
2. Maroti @ Marotrao Mahadeo Thakare,
Age : 60 yrs, Occ: Agriculturist,
3. Dindayal Maroti Thakare,
Age : 37 yrs, Occ- Private Job,
4. Ram Maroti Thakare,
Age : 32 yrs, Occ- Private Job,
5. Shyam Maroti Thakare,
Age : 30 yrs, Occ- Private Job,
6. Amol Dadarao Sonekar,
Age : 32 yrs, Occ- Private Job,

Address of Non-appellant Nos.2 to 6 :
Khairi Village, Tah : Kamptee, Dist :
Nagpur.

Shri. Y. Y. Humne, Advocate for appellant
Ms. S. Z. Haider, APP for Non-Appellant no.1/State
Shri. V. M. Gadkari, Advocate with Shri. S. R. Gupta, Advocate for
Non-Appellant Nos.2 to 6.

CORAM : **N. B. SURYAWANSHI, J.**
RESERVED ON : **22/06/2021**
PRONOUNCED ON : **02/07/2021**

JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. **Admit.**

3. Learned Addl. Public Prosecutor waives service for respondent no.1. Learned Advocate waives service for non-appellant nos.2 to 6.

4. Heard finally with the consent of parties.

5. The Appellant original complainant has filed the present appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, challenging the order passed by the Special Court, Atrocities Act, Nagpur, thereby granting relief under Section 438 of Code of Criminal Procedure to the non-appellant nos. 2 to 6.

6. Appellant on 15.12.2020 lodged a report at Old Kamptee Police Station, which was registered at Crime No. 0453 of 2020, for the offences punishable under Sections

143, 147, 149, 294, 427, 447 and 506 of the Indian Penal Code and under Sections 3(1)(q), 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "Act of 1989"). It is alleged by the informant that she belongs to scheduled caste and is a village Panchayat member. The accused persons reside adjacent to her house and they always abuse her family in the name of caste. On 12.12.2020 at about 8.00 to 8.30 in the night, the informant was at her house, at that time, 7 to 8 stray dogs came in front of her house. To drive them away, the informant picked up a small stone and hurled it at the dogs. At that time, non-appellant no. 2 abused her in the name of caste. He also asked her to go and stay in the schedule caste locality. Thereafter, all the accused persons came at the house of informant carrying iron rod and sticks and gave abuses in the name of caste. They broke open compound gate and then tried to break open door of her house. They could not succeed in doing so. They broke the photo frame of God Buddha hanged on the wall, next to the door. Then they left giving abuses.

7. The non-appellants approached the learned Sessions Court by filing Misc. Criminal Application No. 3513 of

2020 for relief under Section 438 of the Code of Criminal Procedure. The trial Court granted relief to the non-appellants. Hence the present appeal.

8. The learned Advocate for Appellant submitted that the trial Court was not justified in granting relief under Section 438 of the Code of Criminal Procedure in favour of the non-appellants, in view of bar under Section 18 of the Act of 1989. There is no finding recorded by the trial Court that no *prime facie*, case is made out against the non-appellants under the Provisions of the Act of 1989. He placed reliance on the decisions of the Hon'ble Supreme Court in *Shkuntala Devi v/s Baljinder Singh* **reported in 2013 ALL M R (Cri) 2272 (S.C.)** and *Prathvi Raj Chauhan v/s Union Of India*, **2020 AIR (S.C.) 1036** to support his contentions. He, therefore, submitted that the impugned order granting anticipatory bail to the non-appellant nos. 2 to 6 is unsustainable and is liable to be quashed and set aside.

9. The learned APP has produced the investigation papers and submitted that the investigation in the crime is complete, weapons are recovered and the charge sheet is already filed.

10. The learned Advocate for non-appellant nos. 2 to 6 submitted that since the year 2015, various complaints were lodged by the non-appellants against the informant and her family members and relatives. Hence, with a view to give counter blast to the said complaints, the present F.I.R. is lodged. The learned Advocate supported the order passed by the trial Court and submitted that a well reasoned order is passed by the trial Court, which may not be interfered.

11. Heard the learned Advocate for Appellant, the learned Addl. Public Prosecutor for non-appellant no.1/State and the learned advocate for non-appellant nos. 2 to 6. Perused the record.

12. The record indicates that there is civil dispute pending between the family of the informant and the accused persons/non-appellants. From time to time, the accused persons/non-appellants have lodged complaints against the family members and relatives of the informant. Admittedly, the membership of the informant as Village Panchayat member is challenged by the accused/non-appellants before the Collector. The notice of the said

proceeding was received by the informant, and thereafter, the present report is lodged by the informant. F.I.R. does not indicate that at the time of alleged incident, anybody was present. Thus, *prima facie*, it appears that the accused persons are falsely implicated in the present crime with a view to give counter blast to the criminal complaints lodged against the informant and her family members and to pressurize and to harass the non-appellants, this afterthought, complaint is lodged.

13. The crime was registered on 15.12.2020. Upon instructions from the Investigating Officer, the learned APP makes a statement that during the course of investigation, weapons were recovered from the non-appellants/accused persons and after completion of the investigation, charge sheet is filed on 19.6.2021 and the Case is numbered as CC No.344 of 2021.

14. The trial Court while granting relief in favour of the non-appellants has taken into consideration the fact that, non-appellant no. 6 Amol belongs to Scheduled Caste, therefore, offence under the said Act cannot be registered against him. The non-appellants have filed a proceeding

before the Collector challenging the election of the appellant as village Panchayat member. After receipt of the notice of the said proceeding, the present F.I.R. was lodged by the appellant. Civil proceedings are pending between the family of the informant and the non-appellants. Non-appellant no.2 lodged complaint against the husband and brother-in-law of the informant at Kamptee Police Station on 12.03.2015. Regular Civil Suit No.40 of 2015 is pending in the Civil Court between non-appellant no.2 and Manohar Mankar. The trial Court has noted that the alleged incident had taken place in front of the house of the informant. Nobody other than the non-appellants were present at the time of incident. There are no specific allegations as to which accused carried what weapon and who broke the photo frame and the compound gate. It is not clear from F.I.R. as to who specifically abused in the name of Caste.

15. In **Shakuntala Devi** (supra) the Hon'ble Apex Court held that "the High Court had not given any finding in the impugned order that offence under the aforesaid act is not made out against the respondents and granted anticipatory bail."

In **Prathvi Raj Chauhan** (supra) the validity of section 18 of the said Act is upheld. In this judgment in para 31, it is observed that “in cases where no *prima facie*, materials exist warranting arrest in a complaint, the Court has inherent power to direct a pre-arrest bail”

16. Applying the above principles to the case in hand, since the investigation is complete and charge sheet is filed, pre-arrest or custodial detention of the non appellants is not necessary. The trial Court has rightly exercised discretion in favour of the non-appellants and no case is made out by the appellant to warrant interference in the discretionary relief granted in favour of the non-appellants. The appeal is without merit, hence the same is **dismissed**.

17. Needles to state that the observations made herein are *prima facie*, and shall not influence the trial Court at the time of trial.

JUDGE