

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

CRIMINAL APPEAL NOS.257, 262, 334 AND 336 OF 2021

CRIMINAL APPEAL NO. 257 OF 2021

Yogesh alias Chotu s/o Vijay Bhandakkar
Aged about 40 years,
Occ.- Business, R/o Mainde Chowk,
Yavatmal, Tq. and Distt. Yavatmal.

... **APPELLANT**

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station, Yavatmal City,
Yavatmal.
2. Chandan Sudamrao Hatagade,
Aged about – 29 years,
Occ. : Labour/ Social Worker,
R/o Netaji Nagar, Yavatmal City,
Tq. and Distt. Yavatmal.

... **RESPONDENTS**

WITH

CRIMINAL APPEAL NO. 262 OF 2021

Syed Mansoor s/o Syed Dawood
Aged about 32 years,
Occ.- Business, R/o Near Water Tank,
Sunil More Nagar, Yavatmal.

... **APPELLANT**

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Yavatmal City Police Station,
Yavatmal.
2. Chandan Sudam Hatagade,
Aged about – 35 years,
Occ. : Labourer,
R/o Netaji Nagar, Yavatmal,
Tq. and Distt. Yavatmal.

... **RESPONDENTS****WITH****CRIMINAL APPEAL NO. 334 OF 2021**

Atul s/o Shamrao Kumatkar
Aged about 41 years,
Occ.- Business, R/o Behind Cotton
Market, Vanjari Fail, Yavatmal, Tahsil
and District Yavatmal.

... **APPELLANT****VERSUS**

1. The State of Maharashtra,
through Police Station Officer,
Police Station Yavatmal City
Tahsil and District Yavatmal
2. Chandan Sudamrao Hatagade,
Aged about – 35 years,
Occ. : Labourer,
R/o Netaji Nagar, Yavatmal,
Tq. and Distt. Yavatmal.

... **RESPONDENTS****WITH**

CRIMINAL APPEAL NO. 336 OF 2021

Sachin s/o Manohar Mahalle,
 Aged about 42 years,
 Occ.- Business, R/o Gadge Nagar,
 Yavatmal, Tahsil and District Yavatmal.

... **APPELLANT**

VERSUS

1. The State of Maharashtra,
 through Police Station Officer,
 Police Station Yavatmal City
 Tahsil and District Yavatmal
2. Chandan Sudamrao Hatagade,
 Aged about – 35 years,
 Occ. : Labourer,
 R/o Netaji Nagar, Yavatmal,
 Tq. and Distt. Yavatmal.

... **RESPONDENTS**

Criminal Appeal No.257/2021

Shri M.P. Kariya, Advocate for the appellant.
 Shri M.J. Khan, A.P.P. for Respondent no.1/State.
 Shri V.D. Darne, Advocate for Respondent no.2.

Criminal Appeal No.262/2021

Shri Firdos Mirza, Advocate for the appellant.
 Shri M.J. Khan, A.P.P. for Respondent no.1/State.
 Shri V.D. Darne, Advocate for Respondent no.2.

Criminal Appeal Nos.334 and 336 of 2021

Shri A.S. Manohar, Advocate for the appellants.
 Shri M.J. Khan, A.P.P. for Respondent no.1/State.
 Shri V.D. Darne, Advocate for Respondent no.2.

CORAM : VINAY JOSHI, J.
CLOSED FOR JUDGMENT : 01/10/2021
JUDGMENT PRONOUNCED ON : 08/10/2021

JUDGMENT :

Heard. **ADMIT.**

2. By consent, all appeals are taken up for final disposal.
3. All these appeals filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short hereinafter referred to as 'the Atrocities Act') are arising out of rejection of pre-arrest bail in Crime No.481 of 2021 registered with Yavatmal City Police Station for the offence punishable under Sections 365, 397, 109, 504 and 506 of the Indian Penal Code, Section 3(2)(va) of the Atrocities Act and Section 3 read with Section 25 of the Arms Act. Consequently, appellants are seeking for grant of pre-arrest protection.
4. Besides usual grounds, it is primely canvassed that statutory

bar created under Section 18-A of the Atrocities Act, would not attract since *prima facie* case to constitute the offence punishable under the Atrocities Act, has not been made out. It is argued that allegations leveled in the First Information Report are tented one. The informant is a history sheeter, who has exaggerated the occurrence by falsely implicating the number of accused.

5. Learned Counsel for Appellants has pointed out certain inconsistencies from the Police Report and statement of the informant recorded under Section 161 of the Code of Criminal Procedure to impress that a false story has been lodged. It is submitted that there are no specific allegations about giving abuses in the name of caste against the appellants. There was no adequate *mens rea* to constitute the offence under the Atrocities Act. Learned Counsel for the appellants further submit that the incident as stated, is improbable as the injuries sustained by the informant are minor in nature. Moreover, delay in lodgment of First Information Report has been criticized. Lastly, it is submitted that several co-accused are arrested from whom the incriminating articles are already seized.

6. The non-applicant no.1/State resisted bail by filing separate

reply-affidavits. Inasmuch as, the informant also filed his reply in resistance. Both of them have stated that there are specific allegations of abduction, assault and threats against the appellants. Learned A.P.P. would submit that since the informant was undressed, the provisions of Section 3(1)(e) of the Atrocities Act, would also apply. The appellants were aware about the caste of the informant and therefore, statutory bar would come into play.

7. By placing reliance on the decision of Hon'ble Supreme Court in case of *Vilas Pandurang Pawar and anr. vs. State of Maharashtra and ors. (2012) 8 SCC 795* and *Bachu Das vs. State of Bihar and ors. (2014) 3 SCC 471*, it is submitted that in view of specific averments in the Report, the appellants are not entitled for pre-arrest protection due to statutory bar. Learned Counsel for the informant by placing reliance on the decision of this Court in case of *Harshal Suresh Sonawane vs. State of Maharashtra 2020 ALL MR (Cri) 3923* submitted that in view of the allegations made in First Information Report, statutory bar under Section 18-A of the Atrocities Act would come into operation. Learned Counsel for respondent no.2/informant would submit that the appellants are sand mafia and particularly, two prior offences were registered against appellant - Sachin Mahalle. Having regard to the

seriousness of crime, all appeals are prayed to be dismissed.

8. As against this, learned Counsel for the appellants would submit that only on the basis of contents of First Information Report, conclusion cannot be drawn. In support of said contention, he relied on the decision of this Court in Criminal Appeal No.388 of 2020 (*Sangita Popal Bhosale and ors vs. State of Maharashtra and anr.*) decided on 10.09.2020. While claiming bail, it is submitted that some of the co-accused are released on regular bail and pre-arrest protection has also been granted to co-accused. Since parity has not been claimed, I need not consider the said submission as the entitlement for bail has to be independently tested pertaining to specific role of each accused.

9. At the instance of report lodged by informant – Chandan Hatagade, dated 20.05.2021, the crime was registered. The informant is a Social Worker and a Whistleblower. The informant has applied under the Right to Information Act, 2005 for getting C.C.T.V. footage about some Sand Ghats. On 19.05.2021, the informant along with his brother Vikas went to one Dhaba by riding on motorcycle. At that time, co-accused Samir Raja asked them to talk with one Sagir Mistri on mobile. Said Sagir Mistri (co-accused) abused the informant on mobile

phone in filthy language and gave threats. Within short time, 5 to 6 persons including brother of Sagir Mistri namely Salim arrived on the spot. Salim by show of gun, compelled the informant and his brother Vikas to accompany them and took to a business concern namely SM Constructions. All the assailants beat the informant and his brother by means of plastic pipes, wooden stick, wire, leather belt, etc. The informant was made to remove his cloths and it was video graphed. Within short time, few named assailants including appellant – Sachin Mahalle, Atul Kumatkar, Chotu Bhandakkar and Syed Mansoor arrived at said place. Appellant – Sachin Mahalle abused the informant in the name of caste and started beating by plastic pipe. It was followed by Atul Kumatkar and Chotu Bhandakkar and others. Appellant Syed Mansoor abused the informant. They threatened to the informant for not making complaint against them and took his signature on stamp paper. While leaving the place, appellant Sachin Mahalle again threatened for dire consequences. In said occurrence, the informant realized that cash amount of Rs.28,000/- which was in his pocket, went missing.

10. Initial objection is about maintainability of application for pre-arrest bail in terms of Section 438 of the Code of Criminal

Procedure. There can be no dispute that if, *prima facie*, case to constitute the offence punishable under the Atrocities Act is made out, then the statutory bar would come into play. However, in reported case of ***Prathvi Raj Chauhan vs. Union of India and ors. (2020) 4 SCC 727***, the Supreme Court ruled that, if the prosecution fails to make out *prima facie* ingredients to constitute the offence under the Atrocities Act, then the bar would not operate. The learned Counsel for the appellants by relying on the decision of the Supreme Court in case of ***Hitesh Verma vs. State of Uttarakhand and anr. (2020) 10 SCC 710*** submitted that, unless it is proved, that the incident was outcome, because of only the victim belongs to Scheduled Castes or Scheduled Tribes category, the bar would not operate.

11. The allegation of abuses in the name of caste are against the Appellant-Sachin Mahalle. However, the contents of First Information Report nowhere makes out that the occurrence was within the public view. This Court in case of ***Pradnya Pradeep Kenkar vs. State of Maharashtra 2005(3) Mh.L.J. 368*** expressed that in order to constitute the offence of insult or humiliation, two things are essential that the occurrence must be in a place accessible to public or in presence of a member of public.

12. The learned A.P.P. would submit that since the informant was made to undress, the offence punishable under Section 3(1)(e) of the Atrocities Act, would attract. However, reading of First Information Report discloses, that in earlier part of the occurrence, there were allegations about removal of cloths. The Police Report itself indicate that, after the said occurrence, the appellants arrived on the spot belatedly. Therefore, appellants cannot be connected with said incident. Moreover, even-after, completion of investigation, the Police have not invoked the provisions of Section 3(1)(e) of the Atrocities Act.

13. After completion of investigation, the Police have invoked the provisions of Section 3(2)(v-a) of the Atrocities Act against the accused. In order to constitute the offence under the said provision, *prima facie* satisfaction has to be made that the appellants were knowing that the victim belongs to a member of Scheduled Castes or Scheduled Tribes. The decision in case of Hitesh Verma (*supra*), rules that unless insult or humiliation is only on account of victim belonging to the Scheduled Castes or Scheduled Tribes, the offence under the Atrocities Act, would not be made out. The tenor of First Information Report alleges that Appellants were indulging into illegal sand business to which the informant objected. Entire dispute arose out of sand excavation

business. There is no material to indicate that the incident occurred only on account of victims' caste. Therefore, there is no *prima facie* satisfaction about the applicability of the provisions of the Atrocities Act, hence, statutory bar would not apply in the facts of this case.

14. The incident as narrating in the Police Report, can be bifurcated in three parts. The first part is restricted to co-accused Samir Raja and Sagir Mistri, who initially abused and gave threats on mobile phone. The second part pertains to abduction of the informant taking him to the office of SM Construction and beating by 5 to 6 persons. At said time, the informant was allegedly undressed and it was video graphed. Till that time there were no allegations against appellants as their appearance is thereafter.

15. The third part is about the later event which took place in quick succession. In that regard, it is alleged that after sometime all appellants along with few others arrived at the place. Appellant Sachin Mahalle initially abused the informant in the name of caste, threatened and started to beat by plastic pipe. It was following by appellant Atul Kumatkar and Chotu Bhandakkar. The allegation against appellant Syed Mansoor is only about his presence and giving general abuses.

Then it is alleged that while leaving that place, appellant Sachin Mahalle again threatened the informant by giving life threats.

16. Entire episode discloses that appellant Sachin Mahalle took a lead in beating, giving abuses and life threats. Particularly, Sachin Mahalle threatened that if the informant comes in their way obviously in sand business, then he would be killed by crushing under the Truck. Learned Counsel for respondent no.2-informant has pointed out that two prior offences including offence punishable under Section 302 of the Indian Penal Code were registered against appellant-Sachin Mahalle. Having regard to the lead role taken by appellant Sachin Mahalle his custodial interrogation is necessary which may throw light on various aspects.

17. As regard to appellant Atul Kumatkar and Chotu Bhandakkar are concerned, there are general allegations of giving blows by plastic pipe. Injury certificate indicates that the informant sustained five injuries out of which four were simple in nature and one was a blunt trauma over the right wrist. Besides a blow by plastic pipe causing simple injury, no other allegations are against them. It is pointed out that from co-accused, three plastic pipes and two leather belts were

seized. In view of that, liberty of appellants Atul Kumatkar and Chotu Bhandakkar can be protected by imposing certain conditions.

18. As regard to appellant Syed Mansoor is concerned, the role attributed to him is only about his presence and giving general abuses. Having regard to said fact, his liberty can also be protected on certain terms. In view of the above, except appellant Sachin Mahalle rest of the appellants are entitled for pre-arrest protection, hence, the following order :

- (a) Criminal Appeal No.336 of 2021 of appellant Sachin s/o Manohar Mahalle stands dismissed.
- (b) Criminal Appeal Nos.257, 262 and 334 of 2021 stand allowed.
- (c) The common impugned order dated 21.06.2021 as regards to appellants Yogesh alias Chotu s/o Vijay Bhandakkar (Criminal Bail Appln. No.154/2021) and Syed Mansoor s/o Syed Dawood (Criminal Bail Appln. No.163/2021) and impugned order dated 06.08.2021 as regards to appellant Atul s/o Shamrao Kumatkar (Criminal Bail Appln.No.238/2021), passed by the Additional Sessions Judge, Yavatmal are hereby quashed and set aside.”

- (d) Ad-interim orders dated 05/07/2021 (in Criminal Appeal No.257/2021), 07/07/2021 (in Criminal Appeal No.262/2021) and 17/08/2021 (in Criminal Appeal No.334/2021) are hereby made absolute upon same terms and conditions.
- (e) The appellants shall continue to attend concerned Police Station on every Wednesday in between 12.00 noon to 2.00 pm till filing of the charge-sheet.

JUDGE

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