

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CRIMINAL APPEAL NO.14 OF 2022

ANIL ASHOK AUTADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mrs. M.V. Narwade, Advocate h/f Mr. V.P. Narwade, Advocate for appellants

Mr. S.P. Sonpawale, APP for the respondent No.1

Mr. N.S. Jain, Advocate h/f Mr. Shaikh Mazhar A. Jahagirdar, Advocate for
the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28th JUNE, 2022

ORDER :

1 Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order dated 13.12.2021 in Criminal Bail Application No.252/2021 passed by Special Judge, Shrirampur, Dist. Ahmednagar thereby rejecting the bail application under Section 438 of the Code of Criminal Procedure, 1973 filed by the appellants, who were apprehending their arrest in connection with Crime No.800/2021 dated 23.11.2021

registered with Shrirampur City Police Station, Tq. Shrirampur, Dist. Ahmednagar, for the offence punishable under Section 326, 392, 324, 504, 506 of the Indian Penal Code, 1860 and under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard learned Advocate Mrs. M.V. Narwade holding for learned Advocate Mr. V.P. Narwade for appellants, learned APP Mr. S.P. Sonpawale for the respondent No.1 and learned Advocate Mr. N.S. Jain holding for learned Advocate Mr. Shaikh Mazhar A. Jahagirdar for the respondent No.2.

3 The said First Information Report is the outcome of order passed by learned Special Judge under Atrocities Act, Shrirampur dated 19.11.2021 allowing Criminal Miscellaneous Application No.12/2021 directing the In-charge of Shrirampur City Police Station to investigate the complaint under Section 156(3) of the Code of Criminal Procedure. It is to be noted that the respondent No.2-original complainant/informant has contended that he had love affair with the girl since last 14 years. According to him, the girl's relatives were always against their relationship. However, they got married on 17.02.2018 under the Special Marriage Act, but then, he says that instead of going along with him to reside the girl went to her parents house. He had called her to his house on 18.02.2018 and says that she had refused by

saying that he is residing in a slum and, therefore, she does not want to come for cohabitation. He should purchase a bungalow for her. Thereafter, the complainant had called her to his house on the count that his mother was not well and according to him, the girl went to his house and abused the complainant and his mother in filthy language. He has filed report about the same with Shrirampur City Police Station. It is then stated that conciliation was tried to be made between him and the girl, but at that time she has given in writing that she has no intention to cohabit with the complainant. The complainant has then stated that on 06.04.2018, 07.04.2018 and 20.04.2018 incidents had taken place, wherein the said girl had abused the complainant and his wife in filthy language. On 20.04.2018 it is stated that all the accused persons had taken him under the pretext that they want to settle the matter and they had abused him in the name of caste, assaulted him causing grievous injury to him. He has stated that he had gone to Police Station to lodge a report, but only non cognizable offence was got registered. Even he had tried to give written report on 26.04.2018 but it would not got registered. In the meantime, his wife had lodged offence under Section 498-A of the Indian Penal Code and time was spent in getting the bail. Another offence was under Section 376 of the Indian Penal Code was also filed by the wife against him. In that matter also he was required to rush to get anticipatory bail and, therefore, he could not lodge any report. He has stated

that since he is a member of Scheduled Caste and the accused persons are of upper caste, in order to insult him the accused persons have acted in such manner.

4 Thus, it is to be noted from the entire contents of the First Information Report, which is the replica of the Criminal Miscellaneous Application No.12/2021 that all the incidents had taken place in the year 2018. The respondent No.2 has tried to give some explanation for delay, however, whether that is sufficient or not can be decided only upon the trial. What we can consider here at this stage is that there is considerable delay in lodging the First Information Report. The informant had an opportunity to approach the Courts of law and he has not approached within a reasonable time and there is considerable delay of about more than three years, then, it could not have been interpreted by the learned Special Judge that there is prima facie case against the accused persons to attract the offences under the Atrocities Act so as to bar the application under Section 438 of the Code of Criminal Procedure. It is to be noted that the learned Special Judge has absolutely not considered the delay in proper way. It is only stated that the Court is not required to meticulously examine the material on record and attempt to find out whether a prima facie case has been made out under the provisions of the act. This is exactly against the ratio laid down in **Prithviraj**

Chavan vs. Union of India [Writ Petition No.1015 of 2018] decided by Hon'ble Apex Court on 10.02.2020. Hon'ble Supreme Court expects that the Court should go into the aspect whether prima facie case has been made out or not to attract offence under the Atrocities Act. It can be arrived at only by examining the First Information Report and the prosecution papers. No doubt, meticulous examination cannot be undertaken but prima facie things will have to be assessed. For that purpose the delay is also one of the important aspects. Taking into consideration lodging of reports by the girl against him it cannot be then ruled out that in order to frame the accused persons whether concocted story has been put is also required to be considered. Here, it is to be noted that the learned APP has made available the statements of witnesses. Though there are certain statements of the witnesses supporting the prosecution story but the fact again is required to be considered that their statements which are recorded in the month of November, 2021 on-wards those were speaking about the incidents that had taken place in February-April, 2018. Therefore, taking into consideration these aspects it cannot be said that prima facie offence under the Atrocities Act is made out. The bail application was not barred under Section 18 of the said Act. It ought to have been allowed by the learned Special Judge. Appeal, therefore, deserves to be allowed. Hence, following order.

ORDER

- 1 Appeal stands allowed.
- 2 The order passed by learned Special Judge, Shrirampur, Dist. Ahmednagar in Criminal Bail Application No.252/2021 dated 13.12.2021, is hereby set aside.
- 3 The said application stands allowed.
- 4 Appellants be released on P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand only) each.
- 5 The appellants shall not tamper with the evidence of prosecution in any manner.
- 6 They shall not indulge in any criminal activity.
- 7 They shall attend Shrirampur City Police Station, Dist. Ahmednagar, on every Monday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.
- 8 Bail before concerned Special Judge.

(Smt. Vibha Kankanwadi, J.)