

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

**CRIMINAL APPEAL NO.198 OF 2022**

1. Habinur Sk. w/o Ibrahim Sk.
  2. Rukhyabi w/o Jakir Pathan
  3. Sk. Sumaiyya d/o Sk. Ibrahim
  4. Ajimkhan s/o Imamkhan Pathan
- ... Appellants

Versus

1. The State of Maharashtra
  2. Durga w/o Raju Jagdhane
- ... Respondents

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Mr. S. K. Savangikar, Advocate for appellants.

Mr. A. M. Phule, APP for the respondent No.1 – State.

Mr. D. M. Shinde, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 13.06.2022**

**ORDER :-**

1. **Admit.**

2. With the consent of both the parties, matter is taken up for final hearing immediately.

3. The present appeal challenges the order passed in Criminal Bail Application No.55 of 2022 by the learned Special Judge under the Atrocities Act/Additional Sessions Judge-2, Ambad, Dist. Jalna on

03.03.2022 thereby the application filed by the present appellant under Section 438 of the Code of Criminal Procedure came to be rejected. In the beginning itself, it has to be observed that the learned Special Judge ought to have given his correct designation while dealing with the bail applications under a particular enactment. Merely because all the Additional Sessions Judges in Maharashtra have been conferred with the powers under the Atrocities Act to deal with the cases, that does not mean that they should not write an appropriate designation when they are dealing with the provisions under the enactment. This practice has to be deprecated.

3. Heard learned Advocate Mr. S. K. Savangikar for the appellants, learned APP Mr. A. M. Phule for the respondent No.1 – State and learned Advocate Mr. D. M. Shinde for respondent No.2.

4. It has been vehemently submitted on behalf of the appellants that the learned Special Judge has not considered the facts of the case and wrongly held that the application is barred under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act'). The FIR gives wrong name of accused Nos.1, 2 and 3, who are the appellant Nos.1, 2 and 3 before this Court. After taking this Court through the contents of

the FIR, it has been submitted that in the entire FIR, it has not been mentioned as to what is the caste of the informant and what is the caste of the appellants. It ought to have been seen by the learned Special Judge as to whether the provisions of Atrocities Act would be attracted or not. Further, when the FIR has been lodged with a delay of 18 days, it ought to have been considered that it has been lodged with *mala fide* intention and, therefore, the application under Section 438 of the Code of Criminal Procedure ought to have been allowed.

5. Learned APP as well as learned Advocate appearing for respondent No.2 strongly opposes the appeal and submitted that when specific act is attributed to each one of the accused persons/appellants disclosing *prima facie* that they have committed offence under the Atrocities Act, their bail application under Section 438 of the Code of Criminal Procedure was not maintainable under Section 18 of the Atrocities Act. Both of them have also taken this Court through the contents of the FIR and submitted that role has been attributed specifically to appellant Nos.1, 2 and 3 when the alleged incident had taken place in front of the house of the informant at about 9.30 a.m. on 04.02.2022 and as regards the appellant No.4 is concerned, when the informant had started to go to police chowki along with her relatives Krishna and Saraswati, the appellant No.4 had stopped her, abused her

in the name of caste and gave threats. Therefore, the specific offences under the Atrocities Act as well as offences under Sections 504, 506, 143, 143, 147, 149 of Indian Penal Code have been made out against all the appellants for which they are not entitled to get the bail.

6. Here, in this case, we are required to consider the role attributed to each of the accused. The first and the foremost fact is that the incident alleged to have occurred on 04.02.2022, however, the FIR has been lodged on 22.02.2022 that means there is delay of about 18 days in lodging the report. It has been stated in the FIR that said Krishna Kamble and Saraswati Kamble were present when the incident of alleged abuses by appellant No.4 had taken place. It is stated that they had persuaded the informant and take her back to house and then she again says that after about 3 days, appellant No.4 and co-accused Babbu Shaikh (who has been now released on bail) had gone to her house and again given threats that she shall not file a complaint against them otherwise she would not be allowed to stay in the village. She again says that her relatives had pacified her not to give complaint but then she says that appellant No.4 is giving threats and therefore, she has lodged the report. Whether this can be said to be a sufficient ground which explains the delay is to be assessed by the trial Court at the end of the trial. However, when the alleged repeated acts were taking place, yet

the relatives of the informant were persuading her not to lodge report. This fact is undigestible.

7. Perusal of the FIR would show that an incident had taken place at about 9.30 a.m. on 04.02.2022 and at that time, accused Habinur, Sukaiyya and Sumaiyya were the persons, who were present at the spot, and they allegedly started abusing the informant in the name of caste and giving threats to her. The impression gives that they were all abusing in chorus which cannot practically happen, because intention and motive are the different things. Abuses cannot be uttered in chorus. At that place, one Zuber Fakira Shaikh and Babbu Fakira Shaikh appeared later. As against Babbu Shaikh apart from abusing the informant in the name of caste, she says that he had outraged her modesty, but said Babbu Shaikh is not before this Court. He has been released on regular bail. Co-accused Zuber is also not before this Court, but then the informant says that when she was proceeding for giving complaint with Kumbhar Pimpalgaon Police Chowki, at that time, appellant No.4 went near her, abused her in the name of caste and gave threats. The FIR does not disclose the exact place and time when this incident has taken place. Appellant No.4 was not present when the alleged incident took place at about 9.30 a.m. So how appellant No.4 got the knowledge that the informant was proceeding to lodge the

report in respect of the said incident that had allegedly occurred at 9.30 a.m. is a question and again at the cost of repetition, it is to be stated that the relatives of the informant i.e. Krishna and Saraswati, who were present, is stated to have persuaded the informant from lodging any report. The person who was proceeding to lodge the report whether could have been so persuaded not to lodge a report that too after witnessing that some offence is committed against her is again even at this stage is unbelievable. Therefore, *prima facie*, offence under the Atrocities Act are not made out. In view of the observations above and in view of the decision in ***Prathvi Raj Chauhan Vs. Union of India and others, [(2020) 4 SCC 727]***, the application was maintainable under Section 18 of the Atrocities Act. The custody of the appellants is not required for the purpose of investigation. They can be made available for the purpose of investigation and, therefore, the appeal deserves to be allowed, of course after imposing conditions. Hence, the following order :-

### **ORDER**

- I) Appeal stands allowed.
- II) The order passed in Criminal Bail Application No.55 of 2022 by learned Special Judge/Additional Sessions Judge, Ambad, Dist. Jalna on 03.03.2022 is hereby set aside.

III) The order passed by this Court granting ad-interim relief to the appellants on 11.03.2022 stands confirmed. In other words, in the event of arrest of appellant No.1 – Habinur Sk. w/o Ibrahim Sk., appellant No.2 – Rukhyabi w/o Jakir Pathan, appellant No.3 – Sk. Sumaiyya d/o Sk. Ibrahim and appellant No.4 – Ajimkhan s/o Imamkhan Pathan in connection with Crime No.48 of 2022 registered with Ghansawangi Police Station, Dist. Jalna for the offences punishable under Sections 354, 504, 506, 143, 147, 149 of Indian Penal Code and under Sections 3, 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(1)(w)(ii) of the Atrocities Act, they be released on executing P. R. Bond in the sum of Rs.15,000/- each with one surety each in the like amount, if not already released.

IV) The appellants shall not tamper with the evidence of the prosecution in any manner.

V) They shall not indulge in any criminal activity.

VI) It is clarified that the observations made in the above order are restricted to the decision of this appeal only and the trial Court shall not get influenced by the same and can come to its own conclusion after taking into consideration the evidence.

**[SMT. VIBHA KANKANWADI, J.]**