

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.279 OF 2022

Shaikh Sageer s/o Shaikh Khajamiya
Age 42 years, Occupation Labour,
R/o Shankar Nagar, Parbhani,
Taluka and District Parbhani.

...Appellant
(Accused No.2)

VERSUS

1) The State of Maharashtra,
Through Police Station Officer,
Police Station New Mondha, Parbhani
Taluka and District Parbhani.

2) Laxmibai w/o Tulshiram Maske,
Age 48 years, Occupation Labour,
R/o Sayala Khating,
Taluka and District Parbhani.

...Respondents
(Resp.No.2-Orig.
Informant)

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Advocate for Appellant : Mr. S. K. Chavan
APP for Respondent No.1-State : Mr. S. P. Sonpawale
Advocate for Respondent No.2 : Ms. Uma S. Bhosale
(Appointed)

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 23-06-2022

JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, the appeal is **admitted**.

3. By consent the appeal is taken up for final disposal.
4. Present appeal has been filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the rejection order of learned Special Judge (under Atrocities Act), Parbhani, dated 16-03-2022 in Cri.Misc.Appln.(Bail) No.205 of 2022 filed by the appellant (original accused No.2) for anticipatory bail.
5. The appellant apprehending of arrest in connection with Crime No.59 of 2022 dated 13-02-2022, registered with New Mondha Police Station, Parbhani, Taluka and District Parbhani, for the offence punishable under Section 323, 324, 504, 506 r.w.34 of the Indian Penal Code and Section 3 (1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
6. Heard learned Advocate Mr. S. K. Chavan for appellant, learned APP Mr. S. P. Sonpawale for respondent No.1-State, and learned appointed Advocate Ms. Uma S. Bhosale for respondent No.2.
7. It has been vehemently submitted on behalf of the appellant that the informant/present respondent No.2 alleges that the incident

had taken place on 12-02-2022 and she lodged the report on 13-02-2022. According to her, she along with eight other ladies used to work with contractor by name Nagnath Paldewar. She says that they were doing labour work since last ten years, and therefore, the accused persons had the knowledge about the caste of the informant as well as the nine other ladies. The wage they used to get was Rs.400/- per day. According to her, since about one month prior to 13-02-2022 Sachin Paldewar/accused No.1 has not paid them their due amount. When all of them went to the open goods yard of railway station at about 06.30 p.m. on 12-02-2022 then Sachin Paldewar gave them amount @ of Rs.300/- per day. Then they asked, when the rate is as per Rs.400/- per day, why he is giving @ of Rs.300/- per day. Then accused Sachin, appellant and appellant's nephew whose name she was unable to give, started abusing them and accused Sachin as well as present appellant abused them in the name of caste and told that they should take whatever money has been given to them and they were pushed out.

8. The learned Advocate for the appellant submitted that the FIR does not disclose the basic ingredients of the offence, however, the learned Special Judge in spite of relying upon so many decisions of

this Court, has rejected the application on the ground that it is barred under Section 18 of the Atrocities Act. The said order deserves to be set aside.

9. Per contra, the learned APP for respondent No.1-State and learned appointed Advocate to represent the cause of respondent No.2 opposed the appeal and supported the reasons given by the learned Special Judge. Specific role has been attributed to the present appellant and it is stated that he had abused the informant in the name of her caste, therefore, offence under Atrocities Act is made out against him debarring him from getting anticipatory bail in view of bar under Section 18 of the Atrocities Act.

10. In view of the legal position explained in *Prithviraj Chavan v. Union of India, Writ Petition No.1015 of 2018*, decided by Hon'ble Apex Court on 10-02-2020, we will have to consider whether the ingredients of the offence under the Atrocities Act are made out in this case or not. The first and the foremost thing is that in the FIR it is absolutely not disclosed as to how the appellant had any kind of connection with the contract taken by Paldewar. The learned APP after asking question has stated that during the course of the investigation it has been brought on record that the appellant is

working as Munim/Manager with accused No.1 Sachin Paldewar. As aforesaid, the FIR does not disclose his said capacity, and also it does not disclose the fact that since when the informant was knowing the appellant. It is not disclosed by her that since last many years the appellant is finalizing the accounts in respect of the labour work carried out by the informant and the other ladies, and therefore, he was having knowledge about the caste of the informant and others. The statements of the other ladies recorded on 14-02-2022 disclosed the appellant as Munim/Manager of accused No.1 Sachin Paldewar. Even if we consider those statements, yet it is to be noted that they have not disclosed since when the appellant was knowing them prior to the incident. Why the appellant would be interested in abusing the informant and others, is a question. The evidence collected up till now does not show that at any earlier point of time, the informant and other ladies were paid labour charges @ Rs.400/- per day. Therefore, except the oral statement that earlier they used to get wages @ of Rs.400/- per day, there is nothing. There appears to be a money dispute between the witnesses and the informant with Sachin Paldewar. Even if we take that the appellant is his Munim/Manager, he would be bound by what his master says. Under such circumstances, it

cannot be stated that *prima facie* the offence is made out under the Atrocities Act against the appellant. The learned Special Judge has not considered the facts and circumstances in detail. Another most surprising fact is that the same Judge had allowed Criminal Bail Application No.171 of 2022 under Section 438 of Cr.P.C. on 25-02-2022 which was filed by Sachin Nagnath Paldewar. In other words, prior to the rejection of the anticipatory bail application by the present appellant, the same Judge had allowed the anticipatory bail application filed by Sachin Paldewar. Why he has not considered the ground of parity in the application filed by the appellant, is a question. A Judicial Officer cannot act in arbitrary manner. In one given case where the role of the accused is similar, then the same yardstick is required to be applied. In view of this fact also, the order passed by the learned Special Judge deserves to be set aside. The said application is maintainable as there is no bar under Section 18 of the Atrocities Act. Hence, following order.

ORDER

- 1) The appeal stands allowed.
- 2) Order dated 16-03-2022, passed by learned Additional Sessions Judge-4, Parbhani, in Criminal Bail Application No.205 of 2022, is hereby set aside.

3) The interim order passed by this Court on 07-04-2022, is hereby confirmed.

4) In other words, in the alternative if the appellant is not formally arrested, in the event of arrest of appellant Shaikh Sageer s/o Shaikh Khajamiya, in connection with Crime No.59 of 2022, registered with New Mondha Police Station, Parbhani, for the offences punishable under Section 3 (1) (r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Section 323, 324, 504, 506 read with 34 of India Penal Code, the appellant be released on PR and SB of Rs.15000/- (fifteen thousand).

5) The appellant shall not indulge in any criminal activity and he shall not tamper with the evidence of prosecution in any manner.

6) Fees of the appointed Advocate is quantified @ of Rs.5000/- (five thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.