

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.617 OF 2020
WITH APPLN/2117/2020 IN APEAL/617/2020

1. Arti d/o Netajirao Bramhanathakar Kulkarni
2. Meera d/o Netajirao Bramhanathakar Kulkarni
3. Janabai (Kalpna) d/o Netajirao
Bramhanathakar Kulkarni
4. Ganesh s/o Ramesh Kulkarni ... Appellants

Versus

1. The State of Maharashtra
2. Chandramani s/o Bhanudas Salve ... Respondents

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Mr. S. S. Jadhavar, Advocate for appellants.

Mr. S. P. Deshmukh, APP for the respondent – State.

Mr. M. P. Kale, Advocate for Respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15.06.2022

ORDER :-

. **Admit.**

2. Present appeal has been filed by the original accused persons challenging the order of rejection of their anticipatory bail application by the learned Special Judge under Atrocities Act, Gangakhed, Dist. Parbhani vide order dated 09.11.2020 in Criminal Miscellaneous Application (Bail) No.217 of 2020. The appellants were apprehending

their arrest in connection with Crime No.373 of 2020 registered with Gangakhed Police Station, Dist. Parbhani for the offences punishable under Sections 143, 506 of the Indian Penal Code, under Section 135 of the Maharashtra Police Act and under Section 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”), which was on the basis of the FIR lodged by the present respondent No.2.

3. Heard learned Advocate Mr. S. S. Jadhavar for the appellants, learned APP Mr. S. P. Deshmukh for respondent No.1 – State and learned Advocate Mr. M. P. Kale for respondent No.2.

4. It has been vehemently submitted on behalf of the appellants that the case has a chequered history. In fact, as per the police, a piece of land bearing Plot No.16/3/2 admeasuring East-West 30 ft. and South-North 30 ft. situated in Thakur Colony at Gangakhed was given by Nagar Parishad, Gangakhed on 10.12.1996 by a resolution. Possession of the said plot was also given to one Dilip Uttamrao Kulkarni, who was in Indian Army. He expired in the war between India and Pakistan at the border. He was bachelor and, therefore, his mother became the legal heir. In the property extract also, her name was included and the plot is enjoyed by the entire family. Earlier also there was attempt by the

informant and the other persons to grab the said open plot. Such attempt was made on 01.07.2020 and then illegal demand of Rs.5,00,000/- was made by one Rohidas Landge. Threat was given that he would invoke the provisions of Atrocities Act against the appellant No.1 and, therefore, she had lodged the said complaint, but no action was taken by police. Later on when some inquiry was made by the police, it was revealed by the police that the said plot was allotted to Dilip Uttamrao Kulkarni, however, according to the police, the boundaries of the property appear to be raising some problem. In the present case, the incident is stated to have occurred between 01.07.2020 to 31.07.2020 and the report has been lodged on 04.08.2020. The FIR is belated and with some ill motive. The informant himself is an accused in a case which has been filed by the police officer. When there is dispute in respect of the property, definitely, the police had the right to protect their interest, but no such incident as narrated in the FIR had taken place. The FIR that has been lodged is with *mala fide* intention and false implication of the police. The appellants were protected by this Court on 27.11.2020. That protection deserves to be confirmed.

5. Per contra, the learned Advocate appearing for the respondent No.2 and learned APP representing the respondent No.1-State strongly opposed the appeal and submitted that the possibility of tampering with

the evidence cannot be ruled out. The appellant No.1 is an Advocate by profession. In spite of having legal knowledge, she has abused the informant and others in the name of caste. The evidence that has been conducted uptill now would show that the contention of the informant is supported by the witnesses. The adjoining persons had heard the appellants abusing the informant and others in the name of caste. The application before the Special Judge under Section 438 of the Code of Criminal Procedure was barred under Section 18 of the Atrocities Act, as offence under the Atrocities Act was transpiring against the appellants and, therefore, the present appeal deserves to be dismissed.

6. At the outset, it is to be noted from the FIR that the alleged first incident is stated to have taken place on 01.07.2020. It is stated that on that day at about 11.30 p.m., some person had insulted the flag of blue colour which was put in the place which was reserved for the hall in the name of Dr. Babasaheb Ambedkar. Informant himself states that nobody had come forward when they made inquiry as to who has mutilated the flag. On 03.07.2020, his friend Rohidas Landge had heard the appellants saying that they have uprooted the said blue flag put to the board having writing that it is the proposed place for the hall in the name of Dr. Babasaheb Ambedkar. Rohidas had informed that the appellants had abused the community in the name of caste. It is then stated in the FIR

that a panchanama was executed on 20.07.2020 of the area of appellant No.1 and also on 31.07.2020. On 31.07.2020 when the panchanama was going on, according to the informant, appellants came and abused the people who had gathered there in the name of caste. Thus, from the contents of the FIR, it can be seen that the initial action about the alleged insult had taken place on 01.07.2020. Nobody had lodged any report on that day. Even after coming to know on 03.07.2020 that the appellants had done the said act, yet neither Rohidas nor the informant had lodged any report. The last incident is stated to have taken place on 31.07.2020. Even on that day, no immediate action was taken, but the FIR has been lodged on 04.08.2020. There is considerable delay in lodging the report. Statement of Rohidas Landge has been taken on 05.10.2020. When the FIR was lodged on 04.08.2020 disclosing that Rohidas was the person before whom the appellants had allegedly confessed, yet why it had taken the Investigating Officer to take down his statement on 05.10.2020 i.e. after the delay of about two months is a question. However, when the investigation is carried out and the investigating officer was of the opinion that there is no substance in the complaint, he had sent proposal for 'B' Summary vide report dated 05.10.2020. Reasons have been given as to why the Investigating Officer had come to the conclusion that informant had lodged the said

FIR with ill intention. That report was given to the superior seeking approval of the 'B' Summary and to be placed before the appropriate Court. Interesting point to be noted is that by reply, the superior directed the Investigating Officer to remove the defects. Accordingly, after removing defects again 'B' Summary was proposed and letter dated 19.10.2020 was given for the approval. Yet, the superior again rejected that proposal stating that it will not be appropriate to grant permission. In the meantime, the investigating officer got changed and the investigating officer now is different. 'B' Summary would be filed when the investigating officer comes to a conclusion that the FIR has been lodged with *mala fide* intention. As aforesaid even a report by the appropriate police officer would show that the informant had ill intention and there was nothing in favour of the informant or his community members to show that the disputed area was granted by any competent authority for constructing a hall under the name of Dr. Babasaheb Ambedkar.

7. The entire police papers would show that there is civil dispute pending in respect of the said plot. There is evidence in favour of the appellants to show that the Municipal Council had allotted the particular piece of plot to the predecessor of the appellants as he was then serving in Indian Army and had laid his life for the country. The appellants had

the right to protect their property. No doubt, they could not have abused in the name of caste, but as regards those allegations are concerned, the FIR is belated and, at this stage, though the 'B' Summary has not been proved, yet twice the Investigating Officer had come to the conclusion that the FIR itself is *mala fide*. Therefore, definitely, it cannot be said that there is bar under Section 18 of the Atrocities Act for dealing with the application under Section 438 of the Code of Criminal Procedure. The *prima facie* evidence is that the police authorities themselves are not sure that any such offence attracting the ingredients of offence punishable under the Atrocities Act has been committed by the appellants. In that case, in view of ***Prathvi Raj Chauhan Vs. Union of India and others, [(2020) 4 SCC 727]***, the application is maintainable. The learned Special Judge failed to consider all these aspects and it appears that with some predetermined mind rejected the application. In fact, when the law is now crystal clear in view of the decision by the Hon'ble Apex Court in ***Prathvi Raj Chauhan (Supra)***, it was expected from the Special Judge to go into the details of the FIR to see whether offence under the Atrocities Act is *prima facie* made out or not. If it is not made out, then definitely, there is no bar under Section 18 of the Atrocities Act for entertaining an application under Section 438 of the Code of Criminal Procedure. When the application filed by the

appellants for anticipatory bail has been wrongly rejected, it deserves to be allowed by allowing the appeal. Hence, the following order :-

ORDER

- I) The appeal stands allowed.
- II) The order passed in Criminal Miscellaneous Application (Bail) No.217 of 2020 by the learned Special Judge/Additional Sessions Judge-2, Gangakhed, Dist. Parbhani on 09.11.2020 is hereby set aside. The said application stands allowed.
- III) The order passed by this Court granting ad-interim relief to the appellants on 27.11.2020 stands confirmed and made absolute. In other words, in the event of arrest of appellants in connection with Crime No.373 of 2020, registered with Gangakhed Police Station, Dist. Parbhani for the offences punishable under Sections 143, 506 of Indian Penal Code, under Section 135 of the Maharashtra Police Act and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Atrocities Act, they be released on P.R. and S.B. of Rs.15,000/- each, if not already released.
- IV) The appellants shall appear before the investigating officer as and when required.
- V) The appellants shall not tamper with the prosecution evidence.

VI) They shall not indulge in any criminal activity.

VII) 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.

VIII) Criminal Application No.2117 of 2020 stands disposed of.

[SMT. VIBHA KANKANWADI, J.]

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