

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

CRIMINAL APPEAL NO. 834 OF 2022

1. Sandip S/o Ramesh Choure
Age 30 years, Occu. Business
 2. Gajanan S/o Ramesh Choure
Age 27 years, Occu. Business
- Both R/o Siddharth Nagar, Parli (V),
Tq. Parli, Dist. Beed .. Appellants

Versus

The State of Maharashtra and another .. Respondents

WITH

CRIMINAL APPEAL NO. 835 OF 2022

Sumanbai Shriram Choure
Age 75 years, Occu. Household
R/o Siddharth Nagar, Parli (V),
Tq. Parli, Dist. Beed .. Appellant

Versus

The State of Maharashtra and another .. Respondents

Mr. Shrikant G. Kawade, Advocate for the Appellants.
Mr. Y. G. Gujrathi, APP for Respondent No. 1.
Mr. Ganesh V. Mohekar, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for order : 24th November, 2022.

Date on which order pronounced : 29th November, 2022.

ORDER :-

1. These are appeals filed by the accused in Crime No. 197/2022 registered with Sambhajinagar Police Station, Parli Vaijnath, Beed for

the offences punishable under Sections 3 (1) (r), 3 (1) (s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") and Sections 341, 323, 504, 506 and 34 of the Indian Penal Code. The appellants are seeking anticipatory bail. Their bail applications bearing Anticipatory Bail Application Nos. 481/2022 and 479/2022 respectively are rejected by the learned Additional Sessions Judge, Ambajogai by order dated 20.10.2022. The respondent No. 2 lodged First Information Report with Sambhajinagar Police Station, Parli Vajinath, Beed on 01.10.2022 for the offences as stated above. It is alleged in the FIR that these appellants on 09.09.2022 assaulted son of respondent No. 2 namely Kabir and abused in the name of caste on a road when Kabir was coming to home for lunch. From reading of the contents of the FIR, it is seen that certainly a case is made out showing their involvement in the crime.

2. Learned advocate for the appellants submits that the appellants are falsely implicated. Though incident reported is of 09.09.2022, the FIR is lodged on 01.10.2022 that is almost 22 days after the incident. On the date of incident itself, Kabir had lodged a report to the police and the police have already recorded the same as NCR. It is submitted that if really there was a case under the Atrocities Act, it would have been mentioned in the report dated 09.09.2022 itself. He further

submits that, there is no reason assigned for delay. Thus, it is clear that, no such incident has taken place at all. He relies upon the judgment of this Court in a case of **Vinod Vs. State of Maharashtra** reported in **LAWS (BOM)-2022-8-41** in support of his submission that anticipatory bail can be granted and Section 18 of the Atrocities Act is not an absolute bar in granting anticipatory bail. He further relies upon the judgment of this Court in a case of **Vasantrao s/o. Madhavrao Vhadgir and Ors. Vs. The State of Maharashtra and Anr.** reported in **2020 ALL MR (Cri) 365** wherein anticipatory bail was granted to the appellants therein. He further relies upon the judgment of this Court in a case of **Keshav Reddy & Ors. Vs. The State of Maharashtra & Anr.** reported in **2020 ALL MR (Cri) 278** wherein applicability of Sections 18 and 18-A of the Atrocities Act was considered. It was in the facts of that case, the Court had come to a conclusion that the allegation do not constitute an offence under the Act. He further submits that the appellant in Criminal Appeal No. 835/2022 namely Sumanbai Choure is 75 years of age and therefore, her case be considered for grant of anticipatory bail.

3. Learned advocate for respondent No. 2 vehemently opposes the prayers in the appeals. He submits that though the incident is of 09.09.2022, Kabir immediately had been to the Police Station on the

same day. Though he had reported the incident, still the police authority did not record his FIR as it is and they have recorded the same as NCR. It was of a great pursuation with the superior authorities the offence came to be registered at the hands of police. Alongwith his affidavit in reply, the patients register maintained in the office of Sub District Hospital, Parli Vajinath, Beed show that there was earlier incident on 02.05.2022, however, the same was compromised and in view of that the offence was not registered. He has invited attention to the letter tendering apology written by one Mr. Govind Choure. However, in spite of that, again on 09.09.2022 these appellants indulged into similar activity and have assaulted Kabir. He invited attention of this Court to representation made by the informant to Superintendent of Police, Beed dated 14.09.2022 in which she has clearly stated that on 09.09.2022 though she had been to the police station, the police officers intentionally did not record the complaint and only registered the same as NCR. Such representation was also given on 19.09.2022, however, still the police was not taking cognizance. Therefore, on the portal maintained by the State Government, the informant had to file a complaint. Thereafter, there was again a communication requesting to change the Investigating Officer. It is only thereafter the Additional Police Inspector, S. P. Office, Beed directed Sub Divisional Police Officer, Ambajogai to change the

Investigating Officer. It is submitted that the appellants are influential persons and even the police are not taking prompt action against them.

4. Learned advocate for respondent No. 2 further submits that this is a case where bar under Section 18 of the Atrocities Act is clearly attracted. He relies upon the judgment of the Hon'ble Apex Court in a case of **Prathvi Raj Chauhan Vs. Union of India and others** reported in **(2020) 4 SCC 727** by referring to paragraph Nos. 7, 8, 11, 32 and 33 of the said judgment. He submits that in view of this judgment, it is clear that the Court has to only see whether prima facie offence is made out under the Atrocities Act and if the offence is made out, then there is bar of Section 18-A of the Atrocities Act and the Court need not grant anticipatory bail. In this case, in his submission clearly a case is made out and he prays for rejection of the appeals.

5. Learned A.P.P. has produced on record the investigating papers. He points out that there are statements of witnesses. He submits that investigation is in progress and therefore, the arrest of the appellants is necessary. He also adopts the arguments of respondent No. 2.

6. Considering the submissions and the judgments on record, this Court finds that in the FIR case is made out attracting sections of the Atrocities Act. In view of this bar under Sections 18 and 18-A of

the Atrocities Act is clearly attracted. In view of this bar, this Court need not entertain the appeals. The appeals are thus dismissed and disposed off accordingly.

(KISHORE C. SANT, J.)

P.S.B.