

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

ANTICIPATORY BAIL APPLICATION NO.1524 OF 2021

MANDA SUNIL PAWAR AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. S.S. Jadhav, Advocate for applicants

Mrs. V.N. Patil-Jadhav, APP for the respondent No.1

Mr. A.C. Sisodiya, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 25th FEBRUARY, 2022

PRONOUNCED ON : 08th APRIL, 2022

ORDER :

1 The applicants are apprehending their arrest in connection with Crime No.656/2021 dated 29.08.2021 registered with Newasa Police Station, Dist. Ahmednagar, for the offence punishable under Section 354, 354-B, 324, 323, 504, 506, 143, 147 of the Indian Penal Code, 1860, under Section 3(1)(r), 3(1)(s), 3(2)(V-a), 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 7, 8 of the Protection of Children from Sexual Offences Act, 2012.

2 Heard learned Advocate Mr. S.S. Jadhav for applicants, learned APP Mrs. VN. Patil-Jadhav for the respondent No.1 and learned Advocate Mr. A.C. Sisodiya for the respondent No.2.

3 It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. Applicant Nos.1 and 2 are the women and, therefore, provisions of Section 354, 354-B of the Indian Penal Code will not be attracted against them. Applicant No.3 is also old aged man of 70 years. It cannot be said that he had any kind of ill intention. Perusal of the First Information Report would show that main role is attributed to accused Nos.1 and 2, who have been released on bail. Now investigation is complete and charge sheet has been filed. Under such circumstance, the custodial interrogation of the applicants is not necessary. They are ready to abide by the terms of the bail.

4 The learned APP resisted the application and submitted that application under Section 438 of the Code of Criminal Procedure is not maintainable, in view of the bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The informant girl, who is a minor, is member of scheduled caste and the applicants had every knowledge about the caste of the informant and her family, since they

are the resident of same village. Still the informant was strict in public and that can be only with an intention to bring defame to her. Applicant No.2 had assaulted her by coconut leaves on the uncovered body of the informant. The applicant No.1 had twisted the fingers of the informant and uttered that she should be made naked. Applicant No.3 then threatened that she should be killed. Specific role is attributed to the applicants and, therefore, there is bar under Section 18 of the Atrocities Act. Another fact to be noted is that the applicants are absconding since the registration of the offence. The Investigating Officer had made efforts to arrest the accused-applicants. Report has been submitted by ASI, Police Station, Newasa on 27.09.2021, 24.10.2021, 13.11.2021, 22.11.2021, 24.11.2021 and 30.11.2021. Therefore, such absconding accused should not be given discretionary relief under Section 438 of the Code of Criminal Procedure.

5 It is to be noted that the informant-respondent No.2, who had given her age as 18 years while lodging the First Information Report has stated that the incident had taken place at about 7.15 to 8.00 (it is not clear whether it is a.m. or p.m.) on 27.08.2021. She was going for answering nature's call. When she came on road from the garden of lady finger near her house, at that time, accused Nos.1 and 2 had come on two wheeler and gave cut to the informant. She asked them, as to why they cannot cannot drive

the vehicle properly. At that time, accused No.1 got down, caught hold of her hair and caused her to lie down and then his brother i.e. accused No.2 got down from the vehicle and kicked the informant in her back. When she was trying to run, accused No.1 torn her clothes from front side and he scratched her chest. It caused embarrassment to the informant and then by pushing him when she tried to run accused No.2 caught hold of her hair. In the meantime, the wives of accused Nos.1 and 2 came running towards informant. Accused Nandini had twisted hair of the informant and then slapped her. Accused Renuka abused her and assaulted her by stick. Accused Nos.1 and 2 had then kicked on her private part. Thereafter present applicant No.2 came, who assaulted her with coconut leaves. Applicant No.1 twisted her fingers and told that why the remaining clothes should be kept on her person. Accused Yenabai then pulled her cheeks and applicant No.3 gave threat to kill the informant. The informant then just put on her clothes and went running towards the house of one Kisanrao Patil. Kisanrao Patil asked as to what has happened and at that time also accused Yenabai and Renuka had assaulted her by pulling her hair. Informant states that she became unconscious and then she was shifted to hospital in the vehicle of one Vitthal Patil. Thereafter she was shifted Lifeline Hospital, Ahmednagar. Informant lodged the report from hospital on 28.08.2021.

6 Her supplementary statement came to be recorded on 08.09.2021, which is the reproduction of her First Information Report, except the fact that she has disclosed that in her school leaving certificate as well as bona fide certificate a wrong birth date has been mentioned. Her birth date is different and her age on the date of her supplementary statement was 17 years 7 months. She also disclosed that she is the member of scheduled caste. By that time statements of witnesses were recorded, which were almost in the hearsay form and thereafter their supplementary statements have been also recorded on 08.09.2021. Statement of one Kisan Bhausahab Ghodechor has also been recorded and most part of it is hearsay. But then he says that when the informant had come to him, the informant was assaulted by accused Yenabai and Renuka. However, his statement does not say that he had called lady member from his family, gave something to the informant to cover and then he had left her to her house. His statement as well as supplementary statement gives an impression that when she came to him and he had seen accused Yenabai and Renuka assaulting her, informant became unconscious and in that state of affairs itself she was taken in the four wheeler of Vitthal to hospital. This appears to be an unnatural conduct. Interesting point to be noted is that even in his statement he has not given whether it was 7.15 to 8.00 a.m. or p.m., but if we go by the way police write the time, then, 7.15 to 8.00 would be a.m. and not p.m. Interestingly that

has been thereafter changed it appears and in the charge sheet column No.13 it is stated that the incident had taken place at 19.15 to 20.00 hours. There was no hurdle for getting a clarification at any earlier point of time. The medical certificate of one Lifeline Superspeciality Hospital, Ahmednagar gives the history of assault at 7.30 p.m. on 27.08.2021. It gives only one injury in the nature of blunt trauma over chest and abdomen. Age of the injury is stated to be one day and the nature is stated to be simple. There is absolutely no mention about scratches on the chest. For such kind of injury it is hard to believe that the girl should have been admitted. There is no record collected from the earlier hospital Kukana Lande Hospital.

7 No doubt, it appears that the informant was minor on the date of incident and so also that she is a member of scheduled caste, however, we are also require to consider as to whether such incident had taken place and how much substance is there in the allegations.

8 The statement of the informant is also recorded under Section 164 of the Code of Criminal Procedure before Judicial Magistrate First Class, Newasa. Perusal of that statement would show that she has given some different story. She states that at about 7.30 p.m. on 27.08.2021 she had gone to the lady finger garden adjacent to her house for answering nature's

call, at that time, one four wheeler came and it gave cut to her and, therefore, she asked the driver as to why he is driving the vehicle in such a way. Thereafter, she says that the person, who was sitting next to the driver, caught hold of her hair and made her to lie on the ground. There were three persons in the vehicle. All of them have got down and they were accused Nos.1, 2 and third was unknown to her. She has stated that all the three persons had assaulted her by kicks and fist blows and accused No.1 told her that they should take her to the sugarcane crop and should ravish her. Then accused No.2 told that she should be taken in the vehicle and should be taken far away. When the third person opened the door of the vehicle and they were dragging her towards vehicle, she fell down. All of them had touched her with ill intention and when she was shouting they had gagged her mouth. Accused No.2 had latched the door of her house from outside, so that her mother and brother should not come out. When informant was shouting, the ladies from the house of accused came. They had assaulted informant with stick. Some of them had pelted stone on their house. Applicant No.1 Manda pulled the clothes on the person of the informant. Applicant No.2 Sarla had assaulted her by stick. Accused Nandini gave her kicks and fists. Accused Renuka had scratched her near neck. Thereafter accused Abhay's parents and accused Yenabai came. They had also assaulted her. Applicant No.3 told that even if murder is committed then also nobody will do anything. Taking

advantage of the darkness informant fled towards the house of Patil and in front of Patil also she was also assaulted by Renuka, Manda and Yenabai. Applicant No.2 Sarla told that still the informant is not dead and, therefore, she should be beaten more. She then became unconscious and do not know what has happened thereafter. Interesting point to be noted is that she has made allegation against the police also and it is then stated that police had asked them to sit for about two days and had not taken their supplementary statements. Police Officer Mr. Bhadane told that she should not exaggerate and they know everything. There was avoidance by the police to take down her supplementary statement. Thus, perusal of the said statement under Section 164 of the Code of Criminal Procedure would give a totally different picture. Different role has been attributed to different accused persons. Here, in this case we are required to consider the role attributed to the applicants and it is different from the First Information Report as well as the supplementary statement. Advantage of the same should definitely go to the applicants. At any point of time she has not stated that whatever was allegedly done by the accused persons was with the intention by the applicant that since she is member of a scheduled caste they should do it. Therefore, prima facie the ingredients of the offence under Atrocities Act are not made out and, therefore, the ratio laid down in **Prithviraj Chavan vs. Union of India in Writ Petition No.1015 of 2018** decided by Hon'ble Apex

Court on 10.02.2020, will have to be applied.

9 The custodial interrogation of the applicants appears to be not required since the investigation is already over and charge sheet is already filed before the Special Court bearing Special Case No.154/2021.

10 The only fact is that in the charge sheet it is stated that the present applicants are absconding and the charge sheet is filed under Section 299 of the Code of Criminal Procedure against them. It is to be noted that Section 299 of the Code of Criminal Procedure is an enabling provision for the Courts to record the evidence in absence of an absconding accused. It does not give any right to police to file charge sheet under that section. The evidence has been collected against the present applicants also and there is no such procedure contemplated that for the accused, who would be arrested at a later point of time, there should be a separate charge sheet. On the point of absconding of the applicants it is certain from the charge sheet that no procedure as contemplated under Section 82 of the Code of Criminal Procedure has been adopted by the Investigating Officer, who is of the rank of Sub Divisional Police Officer. It is presumed that he has knowledge of the procedure that is required to be adopted as per the Code of Criminal Procedure in connection with the absconding accused. All those reports,

which have been referred above, are nothing but the copy paste and it can be definitely stated that the print out of these reports has been taken at one and the same time by only changing the date. This is obvious when we see report dated 13.11.2021 which is given by A.S.I., Police Station, Newasa to S.D.P.O., Shevgaon. Thereafter, the next report is by Police Inspector, Police Station, Newasa dated 22.11.2021. While making copy paste he has not changed the date below मा. सविनय सादर. Though while making signature he has given the date but still it has also correction. There is no much gap between the date just above his signature; yet, he has not noticed that the blunder has been committed while doing copy paste. Wordings have also not been changed in all these reports. With whom the inquiry was made in respect of the absconding accused, whose statements have been recorded, is absolutely not clear. It is unfortunate that such kind of activities are undertaken by police and, therefore, the faith in the Department is decreasing. When the said report itself is unbelievable, it cannot be said that the applicants are absconding. The Investigating Officer has not explained as to why he has not undertaken the procedure under Section 82 of the Code of Criminal Procedure. Interesting point to be noted is that on 10.01.2021 the District Superintendent of Police, Ahmednagar appears to have given directions, as to how the investigation is to be made in respect of absconding accused. Mere attachment of the same without taking any step as contemplated in those

guidelines it is absolutely not fruitful. The Police Officer of the rank of Sub Divisional Police Officer has not followed the said guidelines issued by his own District Superintendent of Police. Under such circumstance, the said point of objection cannot be appreciated. The interim protection granted earlier to the applicants deserves to be confirmed. Accordingly, it is confirmed. Hence, following order.

ORDER

1 Application stands allowed.

2 The ad-interim protection, granted by this Court earlier to applicants vide order dated 20.12.2021, is hereby confirmed and made absolute. In other words, if the applicants are not formally arrested, in the event of arrest of the applicants viz. **1) Manda Sunil Pawar, 2) Sarla Maruti Jadhav and 3) Maruti Rambhau Jadhav**, in connection with Crime No.656/2021 dated 29.08.2021 registered with Newasa Police Station, Dist. Ahmednagar, for the offence punishable under Section 354, 354-B, 324, 323, 504, 506, 143, 147 of the Indian Penal Code, 1860, under Section 3(1)(r), 3(1)(s), 3(2)(V-a), 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 7, 8 of the Protection of Children from Sexual Offences Act, 2012, they be released on PR. Bond of

Rs.20,000/- (Rupees Twenty Thousand only) each with one or more sureties in the like amount.

3 The applicants shall not indulge in any criminal activity nor they should tamper with the prosecution evidence, in any manner.

4 They should cooperate with the investigation.

(Smt. Vibha Kankanwadi, J.)

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