

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 569 OF 2021

1. Lata Santosh Agarkar, Age 42 yrs, Occ.
Home Maker
2. Neha D/o Santosh Agarkar, Age 19
years, Occ. Student,
3. Nikita d/o Santosh Agarkar, Age 18 yrs,
Occ. Student,

All R/o Galli No. 3, Gajanan Nagar,
Dabki Road, Near Vitthal Mandir, Akola
– 444 002

... APPELLANTS

VERSUS

1. The State of Maharashtra, through
the Police Inspector, Dabki Road,
Police Station, Akola.
2. XYZ (Though name of the victim is
mentioned in the appeal memo, it is
concealed due to mandate of Section
228-A of the IPC)

... RESPONDENTS

WITH

CRIMINAL APPEAL NO. 166 OF 2022

1. Mahavir Ashokrao Agarkar, Age 41 yrs,
Occ. Labour.

2. Sarla w/o Mahavir Agarkar, Age 35 yrs,
Occ. Home Maker

Both R/o Galli No. 3, Gajanan
Nagar, Dabki Road, Near Vitthal Mandir,
Akola – 444 002

... APPELLANTS

VERSUS

1. The State of Maharashtra, through
the Police Inspector, Dabki Road,
Police Station, Akola.
2. XYZ, Misc. Cri. No.4/2022 Cri FIR
763 of 2021 P.S.O. Dabki Road, Police
Station, Akola, Distt. Akola.

Shri R.S. Renu, Advocate for the appellants.
Shri I.J. Damle, A.P.P. for the respondent/State.
Shri Gaurav Singh Sengar, Advocate (appointed) for
respondent no. 2.

CORAM:VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 19/10/2022.

ORAL JUDGMENT :

Heard. **ADMIT.**

2. The matters are taken up for final hearing by consent of the
learned Counsel appearing for the parties.

3. Both appeals are arising out of the crime registered vide C.R. No.763 of 2021 for the offence punishable under Sections 376(2)(n), 504, 506, 34 of the Indian Penal Code read with Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Act').

4. The Appellants of Criminal Appeal No.569 of 2021 are accused nos. 1 to 4 whilst the appellant of Criminal Appeal No.166 of 2022 are accused nos. 5 and 6 in the crime. All appellants have applied to the Special Court for grant of pre-arrest protection, however it was declined vide orders dated 08.12.2021 and 13.01.2022 respectively.

5. At the instance of report lodged by the victim-lady who was 19 years of age, crime was registered. It is her case that she had love relationship with accused no.1 Abhishek (arrested and released on bail). Since the accused no.1 was falling short to his marriageable age, both of them ran away to the relatives house and got executed a document in the nature of live-in-relationship. It is the prosecution case that the victim stayed in the house of the appellants who are the mother, sister, maternal uncle and aunt of the main accused. According to the prosecution, all the appellants have facilitated main accused to

stay at their house and assisted him in maintaining relationship. It is particularly alleged that on 20.11.2021, all appellants took the victim out of the house and abused her in the name of caste and finally drove her out of the house. Thus allegations are of assisting the main accused to maintain the relationship with the victim and humiliating her in the name of caste.

6. Learned Counsel appearing for the appellants would submit that the allegations are quite vague and therefore, statutory bar created under Section 18-A of the Act, would not apply. He would submit that the principal allegations of rape are against the main-accused Abhishek who has already faced custodial interrogation and released on bail. The appellants Lata Agarkar, Neha Raut and Nikita Agarkar are the mother and sisters of the main-accused Abhishek, who have no role in the episode as well as they are residing separately. It is submitted that Appellant Mahavir Agarkar and Sarala Agarkar are the uncle and aunt, who never facilitated the commission of offence. Particularly, the appellants have denied the incident dated 20.11.2021 as alleged by the victim.

7. The State as well as the learned Counsel appearing for the victim resisted the bail by contending that though the main allegations

are against the co-accused, however, the report makes out a *prima facie* case to attract the provision of the Act.

8. As regards to the maintainability of the applications under Section 438 of the Code of Criminal Procedure, it is well settled in the case of *Prathvi Raj Chauhan vs Union of India and ors. AIR 2020 SC 1036* that if *prima facie* case is not made out then the statutory bar would not apply. Therefore, on the basis of given facts of the case, it is to be decided whether the case for grant of pre-arrest protection has been made out. Apparently, principal allegations about rape are against the co-accused, who has already been released on bail. The appellants are mother, sisters and other relatives of main accused. The Police report merely reiterates that the appellants have allowed co-accused and victim to stay at their house and facilitated them to maintain the relationship. By no stretch of imagination, the appellants can be stated to have role in principal crime since the victim was major.

9. As regards to the allegations about the abuses, humiliation in the name of caste, the victim has not ascribed specific role to either of the accused. As per the police report, all appellants in one voice abused the victim in the name of caste, therefore, it is difficult to digest the same in absence of specific utterances. In order to attract the

provisions of Section 3(1)(r) and 3(1)(s) of the Atrocities Act, the incident must be in a place, which is within the public view. Though it is stated that the incident occurred on a public road, however the First Information Report does not spells out presence of any other person so as to construe that it was within the public view.

10. The provisions of Section 3(1)(w)(i) and 3(1)(w)(ii) of the Atrocities Act have been invoked which *prima facie* does not have any relevance with the existing appellants since there are no allegations, that they have touched to the victim or uttered words of sexual nature towards her. The allegations are quite vague and thus, *prima facie* case has not been made out. Already investigation is complete against the main accused and charge-sheet has been filed. There are no specific allegations against the appellants besides mere role of facilitating the main accused. This Court has already granted interim protection to the appellants vide orders dated 22.12.2021 and 22.03.2022, which is prevailing till date. There is no complaint about misuse of liberty. The prosecution has not pointed out necessity of custodial interrogation. Having regard to the nature of accusation, it is a fit case to grant pre-arrest protection. Above observations are made for deciding these appeals which has no impact on the merits of the case.

11. In view of above both appeals are allowed. Impugned order dated 08.12.2021 passed in Misc. Criminal Application No.1121 of 2021 and order dated 13.01.2022 in Misc. Criminal Application No.14 of 2022 are hereby quashed and set aside.

12. Interim order dated 22.12.2021 passed in Criminal Appeal No.569 of 2021 and interim order dated 22.03.2022 passed in Criminal Appeal No.166 of 2022 are hereby made absolute upon same terms and conditions.

13. Both the appeal stand disposed of accordingly.

14. Fees of appointed learned Counsel in both the appeals, shall be paid as per Rules.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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