

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

CRIMINAL APPEAL NO.42 OF 2023

1) Ganesh Macchindra Jangale,
Age-38 years, Occu:Business,

2) Anil Macchindra Jangale,
Age-35 years, Occu:Business,

Both are R/o-Panegaon,
Tq-Newasa, Dist-Ahmednagar.

...APPELLANTS

VERSUS

1) The State of Maharashtra,
Through Police Station, Sonai,
Dist-Ahmednagar,

2) X. Y. Z.

...RESPONDENTS

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Mr. Shashikant E. Shekade Advocate for Appellants.
Ms. V.S. Choudhari, A.P.P. for Respondent No.1.
Ms. Shilpa L. Awachar Advocate for Respondent No.2
appointed through Legal Aid.

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**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 9th FEBRUARY, 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Appeal has been filed under Section 14A (2) of the

Scheduled Castes and Scheduled Tribes Act (for short "the Atrocities Act") to challenge the order of rejection of the application under Section 438 of the Code of Criminal Procedure filed by the appellants i.e. Criminal Bail Application No.468 of 2022 by the learned Special Judge under the Atrocities Act, Newasa, District-Ahmednagar on 6th January 2023.

2. Respondent No.2 is the original informant, who has filed the said First Information Report (for short "FIR") vide Crime No.0499 of 2022 on 26th December 2022 with Sonai Police Station, District-Ahmednagar for the offence punishable under Sections 376(2)(n), 313, 342, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s), 3(2)(va), 3(2)(v) of the Atrocities Act.

3. Heard learned Advocate Mr. Shekade appearing for the appellants, learned APP Ms. Choudhari appearing for respondent No.1 and learned Advocate Ms. Awachar appearing for Respondent No.2, appointed through Legal Aid.

4. At the outset, it is to be noted that so far as appellant No.1 is concerned, by order dated 27th January 2023, this Court observed that there is no merit in the Appeal filed challenging

the order of rejection of bail in respect of appellant No.1 and therefore, it deserves to be dismissed. Accordingly, the Appeal in respect of appellant No.1 stands dismissed. Therefore, now the present Appeal is restricted to appellant No.2 only.

5. It has been vehemently submitted on behalf of the appellant No.2 that the learned Special Judge erred in rejecting the pre-arrest bail of appellant No.2. The facts would reveal that the informant was an adult lady and was serving as a nurse when she had come in contact with appellant No.1, who runs a laboratory. She had knowledge that appellant No.1 was married, still she says that she as well as appellant No.1 fell in love with each other and there was voluntary sexual relationship between them. So far as the allegations against appellant No.2 is concerned, the informant has stated about the alleged incident that took place on 3rd September 2022. The informant states that she was making phone call to appellant No.1 but he was not receiving it and therefore, she went to the laboratory where she found both the accused persons and at that time accused No.2 had abused her in the name of caste/ community as she belongs to scheduled tribe. She was threatened by both the accused and therefore, she has lodged the report. The report is belated and it only says that due to her mental condition she had not filed the

report earlier. The physical custody of appellant No.2 is not required. The FIR has been lodged with ulterior motive. So far as appellant No.2 is concerned, the learned Special Judge ought not to have observed that the application is barred under Section 18 of the Atrocities Act. Appellant No.2 is ready to abide by the terms of the bail.

6. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 (appointed through Legal Aid) have strongly opposed the Appeal and submitted that the learned trial Judge was right in rejecting the application. The investigation is yet to be completed and therefore, taking into consideration the seriousness of the offence, the physical custody of both the accused is required.

7. As observed earlier, the present Appeal is now in respect of appellant No.2 only. So far as the allegations against appellant No.2 is concerned, it appears from the contents of the FIR that his role is restricted to the extent of the alleged incident dated 3rd September 2022. The informant has specifically stated that since her phone call was not picked up by accused No.1 on 3rd September 2022, she went to his laboratory at around 3.30 p.m. According to her, accused No.2 has abused her in the name of

her caste. Surprising fact to be noted is that she has stated in the FIR that appellant No.2 was present in the said laboratory and he abused her. But immediate next sentence is that thereafter she has made phone call to accused No.2 over his cellphone, whereupon accused No.2 told her on phone that she is at liberty to do what she wants and she cannot cause any harm to them. If accused No.2 was present on the spot, then why informant should give call to accused No.2. It is absolutely not stated as to what was her reaction immediately after the alleged abuse, when accused No.2 left the said place and after how much time she gave phone call to accused No.2. When those alleged abuses were given on face what was the reason for her to give phone call later on to respondent No.2, is a question and this makes the story doubtful even at this stage, so far as accused No.2 is concerned. It is to be noted from the police papers that supplementary statement of the informant was recorded on 27th December 2022 in which the same facts are reiterated. There also no clarification has been given.

8. Further, statement of the informant under Section 164 of the Code of Criminal Procedure has been recorded on 31st January 2023. In that statement the story is totally different. She has stated that she came to know about the affair of

accused No.1 with another lady, in 2020. She had told the said fact to accused No.2 but accused No.2 used to pick quarrels with her. There is absolutely no whisper about the alleged incident dated 3rd September 2022 in her statement under Section 164 of the Code of Criminal Procedure. So far as appellant No.2 is concerned, when prima facie case under the Atrocities Act is not made out then definitely there is no bar for entertaining the anticipatory bail application. Following observations in the case of ***Prathvi Raj Chauhan vs. Union of India (UOI) and others, AIR 2020 SC 1036***, would be useful here, wherein it is observed that:-

“ 10. Concerning the applicability of provisions of section 438 Cr.P.C., it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A(i) shall not apply. We have clarified this aspect while deciding the review petitions.”

9. Thus, considering the facts of the case physical custody of appellant No.2 is not required. The Appeal, therefore, deserves to be allowed partly. This Court had granted interim protection to appellant No.2 on 27th January 2023. The said order deserves to be confirmed. Hence, the following order:-

ORDER

(I) The Appeal stands partly allowed.

(II) The Appeal in respect of appellant No.1 stands dismissed.

(III) The Appeal in respect of appellant No.2 stands allowed.

(IV) The order passed by learned Special Judge, Newasa in Criminal Bail Application No.468 of 2022 on 6th January 2023, stands set aside in respect of appellant No.2 only. The said application stands allowed only in respect of appellant No.2.

(V) The interim protection granted to appellant No.2 by this Court by order dated 27th January 2023 stands confirmed. In other words, it is clarified that in the event of arrest of appellant No.2 – Anil Macchindra Jangle, in connection with Crime No.0499 of 2022 registered with Sonai Police Station, District-Ahmednagar, for the offences punishable under Sections 376(2)(n), 313, 342, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s), 3(2)(va), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on bail on his furnishing PR Bond of Rs.30,000/- with two sureties of Rs.15,000/- each, if already not released.

(VI) Appellant No.2 shall remain present before the Investigating Officer as and when called and co-operate with the investigation.

(VII) Appellant No.2 shall not tamper with the evidence of the prosecution in any manner.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB23