

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.86 OF 2023

1. Sujit s/o Ashok Khemnar
Age: 26 years, Occu.: Civil Engineer,
2. Anmol s/o Shankar Khemnar
Age: 28 years, Occu.: Business,
3. Sushant s/o Prabhakar Wakchoure
Age: 40 years, Occu.: Business,
4. Umesh s/o Ashok Gadekar
Age: 32 years, Occu.: Agri. & Service,
5. Ganpat s/o Balasaheb Pawar
Age: 31 years, Occu.: Service
6. Kishor s/o Bapu Gadekar
Age: 35 years, Occu.: Agri.,
7. Rafik Sikandar Chaugule
Age: 43 years, Occu.: Agri.,
8. Bhagwat Subhash Shendage
Age: 24 years, Occu.: Agri.,
9. Lakhan Subhash Shendage
Age: 28 years, Occu.: Business,
10. Balam Suleman Patel
Age: 36 years, Occu.: Agri.,
11. Dattatray Subhash Renukadas,
Age: 33 years, Occu.: Service,
12. Firoz s/o Sardar Patel
Age: 31 years, Occu.: Agri.,
13. Kalpesh s/o Balasaheb Gadage
Age: 25 years, Occu.: Agri.,

All R/o. Sakur,
Tq. Sangamner, Dist. Ahmednagar

.. Appellants

Versus

1. The State of Maharashtra
2. Superintendent of Police,
Ahmednagar, Tq. and Dist. Ahmednagar
3. Sunil s/o Namdev Ighe (Informant)
Age: 39 years, Occu.: Agri. & Social Work
R/o. Sakur, Tq. Sangamner,
Dist. Ahmednagar.
4. Prabhakar s/o Sukhdev Kadam (Victim)
Age: 40 years, Occu.: Agri.,
R/o. Sakur, Tq. Sangamner,
Dist. Ahmednagar

.. Respondents

...
WITH

CRIMINAL APPEAL NO.91 OF 2023

1. Shankar s/o Hanmanta Khemnar
Age: 58 years, Occu.: Agri.,
2. Indrajeet s/o Ashok Khemnar
Age: 28 years, Occu.: Agri.,
3. Rajendra s/o Namdev Khemnar
Age: 33 years, Occu.: Agri.,
4. Amol s/o Kondaji Kudnar
Age: 26 years, Occu.: Service,
5. Subhash s/o Bhimaji Shendage
Age: 50 years, Occu.: Business,

No.1 to 3 and 5 are R/o. Sakur,
Tq. Sangamner, Dist. Ahmednagar.
No.4 is R/o. Pune, Tq. & Dist. Pune.

.. Appellants

Versus

1. The State of Maharashtra
2. Superintendent of Police,
Ahmednagar, Tq. & Dist. Ahmednagar
3. Sunil s/o Namdev Ighe (Informant)
Age: 39 years, Occu.: Agri., & Social Work,
Dist. Ahmednagar.
4. Prabhakar s/o Sukhdev Kadam (Victim)
Age: 40 years, Occu.: Agri.,
R/o. Sakur, Tq. Sangamner,
Dist. Ahmednagar

.. Respondents

...
Mr. R. N. Dhorde, Senior Counsel i/b Mr. V. R. Dhorde for the appellants in both the appeals.

Mr. R. D. Sanap, APP for respondent Nos.1 and 2 - State in both the appeals.

Mr. D. D. Pokharkar, Advocate for respondent Nos.3 and 4 in both the appeals.

...

**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 9th March, 2023.

JUDGMENT :- (Per Smt. Vibha Kankanwadi, J.)

. Admit.

2. Both the appeals have been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") to challenge the order of rejection of their anticipatory bail by learned Special Judge, under the Atrocities Act/District Judge-2/Additional Sessions Judge,

Sangamner on 18.01.2023 in Criminal Application Nos.02 of 2023 and 01 of 2023 respectively.

3. Appellants in both the appeals have been arrayed as accused in Crime No.446 of 2022 registered with Ghargaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 307, 329, 143, 147, 148, 149, 427, 341 of Indian Penal Code, under Sections 3(1)(r), 3(1)(r)(s), 3(1)(2)(vi) of the Atrocities Act and under Sections 3, 4, 23 of the Arms Act, which came to be registered at the behest of respondent No.3.

4. Heard learned Senior Counsel Mr. R. N. Dhorde instructed by learned Advocate Mr. V. R. Dhorde for the appellants in both the appeals, learned APP Mr. R. D. Sanap for respondent Nos.1 and 2 - State in both the appeals and learned Advocate Mr. D. D. Pokharkar for respondent Nos.3 and 4 in both the appeals.

5. It has been vehemently submitted by the learned Senior Counsel for the appellants in both the appeals that the FIR is nothing but the outcome of political rivalry. Crime No.446 of 2022 when lodged on 31.12.2022 was not under the offences of the Atrocities Act, but it was only under Indian Penal Code, however, later on by report dated 06.01.2023, those Sections under the Atrocities Act came to be added. Therefore, it ought to have been seen by the learned Special

Judge as to whether there was real intention on the part of the appellants (even if it is considered that any such incident has taken place) to insult the member of Scheduled Caste. The informant is admittedly not a member of Scheduled Caste, but later on in the statement of witness Prabhakar Sukhdev Kadam it is stated that he was abused in the name of caste and he claims to be the member of Scheduled Caste. Therefore, the learned Special Judge wrongly considered that there is bar under Section 18 or 18-A of the Atrocities Act.

6. It has been further submitted on behalf of the appellants that respondent No.3 had earlier filed FIR vide Crime No.444 of 2022 with the same police station around 20.42 hours on 30.12.2022 against eight persons alleging that they have committed offence under Sections 143, 323, 504, 506 of Indian Penal Code. In that FIR, it was contended that respondent No.3 was amongst the persons, who were attending the Gramsabha in Grampanchayat, Sakur around 10.30 a.m. on the same date. There were about 150 to 200 villagers who were present at that time and he contends that when he stood up and raised questions in respect of the water supply, he was assaulted, abused and threatened. In the next FIR i.e. Crime No.446 of 2022, he has arrayed 16 named persons and 10 to 15 unknown persons. He states that he had gone along with Bilal Shaikh and Prabhakar

Sukhdev Kadam to police station to lodge report and after lodging the report, they were returning on motorcycle around 9.40 p.m. The incident is stated to have taken place near Hiwragaon. He has stated that accused Anmol Khemnar had assaulted him on stomach with the help of sword. The accused persons have assaulted him as well as the other two persons along with him with tommy and iron rod. It is further stated that Sujit Khemnar had pointed out revolver to his head and gave threat. Accused Ganpat Pawar assaulted him by the handle of scythe. Accused Kishor Gadekar assaulted him by iron rod. It is also then stated that his gold chain and cash of Rs.28,000/- was forcibly taken from the pocket of his pant. He then also stated that Sujit Khemnar and Anmol Khemnar had put some medicine in his mouth and he was left there. The other persons took him to hospital. It is the prosecution story that he has got himself admitted and checked by Dr. Ashok Ithape and it can be seen that said Dr. Ithape is the President of Bhartiya Janata Party, Sangamner and the informant and the witnesses are the followers of the said party, whereas the appellants are from Indian National Congress. There were elections just prior to the FIR and in that election the informant's party members were defeated. Appellant Shankar Khemnar was the head of his panel i.e. Shetkari Vikas Mandal and the said Shetkari Vikas Mandal had contested elections on all 17 seats as well as the direct

elections of Sarpanch. The opposite mandal was Parivartan Vikas Mandal, which was supported by Bhartiya Janata Party as well as the informant. Out of 17 seats, 16 seats from the panel of appellant No.1 came to be elected on 20.12.2022. The thumping majority in the election and the defeat that they have received has caused the concoction of the story. In fact, the Government Hospital was near, but the appellant intentionally went to Dr. Ashok Ithape's Hospital. Dr. Ithape is also close associate of Hon'ble Sitting Cabinet Minister. Therefore, when the FIR is only to wreak vengeance against the appellants, there cannot be bar under Section 18 or 18-A of the Atrocities Act. The physical custody of the appellants is not required at all and, therefore, the impugned order deserves to be set aside.

7. Per contra, the learned APP as well as learned Advocate representing respondent Nos.3 and 4 i.e. the informant and the victim strongly opposed the appeals. Though in the FIR it is not stated that there was abuses in the name of caste, yet the victim respondent No.4 has stated about it in his statement under Section 161 of the Code of Criminal Procedure. He had also received injuries and, therefore, the ingredients under the Atrocities Act are attracted. The appellants are having criminal antecedents and if they are released on anticipatory bail, it would be dangerous to the life of respondent Nos.3 and 4. The details about the criminal antecedents

have been given. The Trial Court has rightly rejected the applications.

8. At the outset, it is to be noted that when Crime No.446 of 2022 was registered, at that time, it was only under Indian Penal Code Sections and it is admitted to the original informant - present respondent No.3 that he is not the member of Scheduled Caste. Perusal of the police papers would show that on the same day statement of witness Prabhakar Sukhdev Kadam has been recorded under Section 161 of the Code of Criminal Procedure by Police Inspector, Ghargaon Police Station and in his statement, he has stated that when accused persons were assaulting them, at that time, accused Shankar and Indrajit had given phone call to other accused who were present there and the other accused had put the phone on speaker and it was heard that Shankar and Indrajit instigating the other accused persons by saying that they should cut legs of the informant and murder the informant and it was then stated that the person from Scheduled Caste, who is along with informant, has become arrogant and why he has gone along with the informant and they would see that he is thrown out of the village. After this statement has been recorded, there is addition of Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act. Many questions arise. First of all it is not clear as to when statement of Prabhakar was recorded,

because it appears that FIR was taken in Ithape Hospital when informant was admitted. It does not appear that witness Prabhakar was admitted in the said Hospital. Further as we are firstly concentrating on the fact as to whether there was bar to the bail applications under Section 438 of the Code of Criminal Procedure or not those facts will have to be considered. The first question that arises is as to how accused Shankar and Indrajit would have come to know that Prabhakar is along with the informant. Prabhakar does not say that it was a video call. He has not stated on whose phone the said phone was received. Secondly, even if for the sake of arguments it is accepted that such phone call was given, it is hard to imagine that the said person will put it on the speaker phone while the assault is going on. Thirdly whatever was stated by Shankar and Indrajit (that too stated to be in chorus) was to the person to whom the phone call was given. There was no direct dialogue between Shankar, Indrajit and Prabhakar. Further, perusal of the police papers would show that one Dipak Dadasaheb Hazare had given a complaint on 20.01.2023 to the investigating officer, which was in fact an information informing that Prabhakar Sukhdev Kadam is not a member of Scheduled Caste, but he has adopted Christianity and his Baptisma was done with St. Mary's Church, Sangamner. Thereafter, the investigating officer had issued a letter to the in-charge of the

said Church making inquiry about the Baptisma. The said letter dated 20.01.2023 given by Deputy Superintendent of Police, Sangamner has been responded by St. Mary's Church on 24.01.2023 and it is stated that Baptisma of Prabhakar Sukhdev Kadam was done on 04.09.1980 by late Father John Belsar. Date of birth of Prabhakar is then given as 01.01.1980. That means on the date of Baptisma, said person was eight months old. The certificate by St. Mary's Church also states that after Baptisma, Prabhakar had adopted the culture of Christianity. However, now it will have to be considered by the Trial Court as to whether said Prabhakar can be said to be a member of Scheduled Caste, when his Baptisma was done. *Prima facie* then he cannot be considered as member of Scheduled Caste though it appears that his brother has been given a caste certificate as member of Scheduled Caste. The learned Trial Judge was not armed with the said certificate from the Church, but the said progress in the investigation is required to be considered here and, therefore, it cannot be stated that there was bar under Section 18 or 18-A of the Atrocities Act. Secondly what prevented Prabhakar from lodging FIR, is a question. One more fact will have to be considered is that if such dialogues were heard on speaker phone even by informant and Bilal Shaikh then recites to that effect should have been in the FIR as well as statement of Bilal Shaikh under Section 161 of the Code of

Criminal Procedure. They both are silent on this point. On this count also it will have to be stated that as regards the allegations in respect of the offence under the Atrocities Act are concerned, *prima facie* it is based on concocted story and due to political rivalry.

9. Now, as regards the Indian Penal Code Sections are concerned, it is contended by the informant that he was assaulted by Anmol Khemnagar on stomach with sword. The Medico Legal Certificate issued by Dr. Itape would show that there were three injuries to the informant (i) contuse lacerated wound over left calf muscle size 2cm x 2cm x 1cm, (ii) Small CLW over left little finger of size 2cm x 1cm x 1 cm. and (iii) multiple abrasion present on back and the x-ray show fracture to mid phalange of left little finger. The nature of the injury is said to be grievous. There is absolutely no mention of injury on the stomach that too which could have been possible by sword. It can be seen from the above description of the injury, as there is fracture to the little finger, that the nature of the injury is described as grievous. Otherwise those injuries could have been termed only as simple. No doubt as regards accused Sujit is concerned the FIR says that he pointed out the revolver to the head of the informant and had given threat to kill. For this purpose, the custody of all the accused persons is absolutely not necessary. At this stage, we are also considering the injury certificates of Prabhakar Kadam and Bilal

Shaikh. Prabhakar Kadam has sustained (i) injury to left and right leg, (ii) injury to back and (iii) abrasion on left and right leg. They all are stated to be simple injuries with blunt object. So also, witness Bilal Shaikh has suffered two injuries i.e. (i) injury in right leg and right forearm and (ii) abrasion over right forearm. Both are stated to be simple injuries. It is also stated that they have been examined by Dr. Ithape.

10. Taking into consideration the nature of the evidence collected uptill now, for the reasons stated above and with the physical background, so also taking into consideration the scuffle that had alleged to have occurred in the Gramsabha for which Crime No.444 of 2022 was already filed, the learned Special Judge ought to have granted the bail. This Court by order dated 02.02.2023 had granted interim protection to the appellants in both the appeals. That order deserves to be confirmed. Hence, the following order :-

ORDER

- i) Criminal Appeal Nos.86 of 2023 and 91 of 2023 stand allowed.
- ii) The orders passed below application Exhibit-01 in Criminal Bail Application Nos.02 of 2023 and 01 of 2023 dated 18.01.2023 by learned Special Judge, under the Atrocities Act/

District Judge-2/Additional Sessions Judge, Sangamner stand set aside. Both the said applications stand allowed.

iii) The interim protection granted by this Court earlier to the appellants vide order dated 02.02.2023 is hereby confirmed and made absolute. In other words, in the event of arrest of appellants in Criminal Appeal No.86 of 2023 viz. **(1) Sujit Ashok Khemnar, (2) Anmol Shankar Khemnar, (3) Sushant Prabhakar Wakchoure, (4) Umesh Ashok Gadekar, (5) Ganpat Balasaheb Pawar, (6) Kishor Babu Gadekar, (7) Rafik Sikandar Chaugule, (8) Bhagwat Subhash Shendage, (9) Lakhan Subhash Shendage, (10) Balam Suleman Patel, (11) Dattatraya Subhash Renukadas, (12) Firoz Sardar Patel and (13) Kalpesh Balasaheb Gadage** and appellants in Criminal Appeal No.91 of 2023 viz. **(1) Shankar Hanmanta Khemnar, (2) Indrajeet Ashok Khemnar, (3) Rajendra Namdev Khemnar, (4) Amol Kondaji Kudnar and (5) Subhash Bhimaji Shendage** in connection with Crime No.446 of 2022 dated 31.12.2022 registered with Ghargaon Police Station, Tq. Sangamner, Dist. Ahmednagar, for the offences punishable under Sections 307, 329, 143, 147, 148, 149, 427, 341 of Indian Penal Code, under Sections 3(1)(r), 3(1)(r)(s), 3(1)(2)(vi) of the Atrocities Act and under Sections 3, 4, 23 of the Arms

Act, they be released on P.R. and S.B. of Rs.15,000/- each, if not already released.

iv) The appellants in both the appeals shall not tamper with the evidence of the prosecution in any manner.

v) They shall not indulge in any criminal activity.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm