

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 95 OF 2023
WITH APEAL/96/2023

SUBHASH BAJIRAO KHEMNAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Senior Advocate Mr. V. D. Sapkal i/by Mr. Sapkal
Sandip R.

APP for Respondent/State : Mr. S.R. Yadav-Lonikar

Advocate for Respondent No.2 : Mr. Shermale K. N.

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CORAM : KISHORE C. SANT, J.

DATE : 27th FEBRUARY 2023.

Per Court :

Heard.

1. This is an appeal seeking bail in the event of arrest of the appellants in respect of the Crime No. 005/2023 registered with Ghargaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 452, 354, 143, 323, 504, 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(2)(iv) of the Scheduled Caste

and Scheduled Tribes (Prevention of Atrocities) Act. Since the FIR was registered, the appellants approached the Court of learned Sessions Judge, Sangamner by filing anticipatory bail application no. 09/2023. The learned Additional Sessions Judge by order dated 21.01.2023 rejected the said application. Therefore the appellants are before this Court.

2. The FIR is lodged by a lady, who happens to be a wife of Sarpanch of the village. She alleged that on 03.01.2023, she alongwith her husband and various other persons from the village had been to Deputy Superintendent of Police, Sangamner Division, giving representation in support of the village member and Deputy Sarpanch Shri. Shankar Patil Khemnar and Indrajit Patil Khemnar. After giving said representation, they came back. On 04.01.2023 at around 07:30, it is alleged these appellants alongwith 9 to 10 unknown persons in a mob went to the house of the respondent no.2. They asked as to why the informant and others gave a representation and also gave interview on Television/Media. They started abuse in the name of caste and further threatened that they will set the house of respondent no.2 on fire. At

the relevant time, some persons of the muslim community also gathered. The husband of the informant and others started pacifying the mob. However, the persons from the mob again insulted the husband of the informant and others in the name of caste. It is further alleged that thereafter they even came in the house and assaulted the members of the family. Thereafter those persons dragged the respondent no.2, her husband and other family members in front of the house and torn their cloths and committed the modesty in the presence of public and insulted in the public on caste. It is lastly mentioned in the information that from the persons there is threat to the entire community belonging to the schedule caste in the village.

3. The learned Senior Counsel for the appellants points out that there was election in the village and on that there were two groups in the village. It is only because of the village politics, information is lodged. Just two days before, one Sunil Vighe lodged a complaint against two persons namely Shankar Patil, Indrajit Patil and other persons. Sunil Vighe claimed to be a social worker and raised points against the problems in the village etc. Thus he submits because of

this, complaints are filed. His main contentions are that there is no specific allegation against any one, those names are mentioned in the FIR. His submission that not only it is the appellants alone against whom the allegations are made, but the allegations are made against 9 to 10 unknown persons as well.

. From the FIR, he points out that though she has named these appellants, but against not a single person, there is specific allegation, when she was knowing each of the appellant by name. He further submits that this factor itself is sufficient to show that no offence is made out against any of the appellants. Though he submits that certain photographs are annexed to the appeal memo showing that some of the persons were not present at the time of incident. The photographs show that they were at some other place. He has also produced on record the certificate under Section 65-B of the Evidence Act in support of the photographs and however it is not a material at this stage, this Court cannot go into that aspect.

4. The learned APP submits that there are at-least four statements of independent persons, who belonged to upper caste, who had supported

the contents of the FIR. He also invited attention to the supplementary statement of the informant recorded on 06.01.2023. There is also one statement of one Sushma recorded on 06.01.2023. The said statements are in tune with the FIR. On a specific query, he fairly conceded that even in the supplementary statement, which is recorded, there is no specific role assigned to any of the accused persons.

5. The learned Advocate for the respondent no.2 vehemently argued the matter. He submits that the incident had taken place on 04.01.2023 and the information was immediately lodged within three four hours. He submits that when a huge mob comes to attack, it is difficult to name a specific person or to assign specific role to any person. Since the names of all persons are appearing, it is clear that they were present at the spot. He submits that since entire incident has arisen out of political rivalry, there is clear motive in the mind of each of the persons as an offence is clearly made out against all the persons. He submits that there is a bar to consider the application. He also supports the argument of the learned APP and submits that there are statements of independent person that too of persons belonging to

upper caste. It is a case wherein the bail deserves to be refused. He invited attention to the last paragraph of the FIR, wherein it is stated that there is a threat to the entire locality of the persons who belonged to the scheduled caste and thus submits that when there is a clear apprehension, no bail deserves to be granted to the appellants. He submits that there are even criminal antecedents against the accused persons namely Isaq Abdul Patel and Saddam Choudhary. Both are involved in various offences. He relied upon the various judgments passed by this Court as well as by the Hon'ble Apex Court that is order passed by this Court in Criminal Appeal No.877/2022. Where in paragraph no.17 this Court has observed that it is clear that when the allegations are made out attracting the ingredients of the offences under the Atrocities Act, bar under Section 18 and 18-A of the Atrocities Act comes into play and power under Section 438 of the Code of Criminal Procedure, cannot be used.

. He relied upon another judgment in Criminal Appeal No.4/2022, wherein this Court at Principal Seat at Bombay observed that a prima case is made out attracting the ingredients of the Sections of the Atrocities Act, bail shall not be granted.

6. He further relied upon the judgment passed by this Court in Criminal Appeal No.271/2021. Wherein this Court after considering the judgment in the case of Prathviraj Chauhan Vs. Union of India and Anr.; (2020) 4 SCC 727, considered the bar under Section 18 and 18A of the Atrocities Act and observed that it cannot be said that prima facie the offence under the Atrocities Act cannot be made out.

. He relied upon the judgment passed by the Hon'ble Apex Court in Criminal Appeal No. 1834/2022. Wherein the Hon'ble Apex Court has considered that while deciding appeals for anticipatory bail under Atrocities Act, consideration of custodial interrogation is not a factor to be considered.

7. The next judgment passed by the Hon'ble Apex Court in the case of Prashant Singh Rajput Vs. The State of Madhya Pradesh and Another, reported in AIR (2021) SC 5004. Wherein the Hon'ble Apex Court by considering the provision of Section 18, refused the bail of the accused persons. He relied upon the last judgment in Anticipatory Bail Application No.431/2021 passed by this Court at Principal Seat at Bombay.

8. Thus, considering all the submissions of both the learned Advocates and judgments, this Court finds that the first thing needs to be seen as to whether the provisions of Atrocities Act are attracted by reading the FIR as it is? In this case, as submitted by the learned Senior Counsel, no specific act is alleged against any of the accused persons. It is clearly seen that there is a background of political rivalry and therefore all the parties know each other by name and there is no question of identity. Under such circumstances, it is clear that any person had done any overact certainly his name would have been mentioned by the informant. It is clear from the record that even the informant is a person who actually participates in the political and social field. She has even appeared before the Media and had submitted the representation before the Dy. S.P. etc. Certainly it cannot be said that she does not know as to what needs to be stated in the complaint. In spite of that it appears that the allegations are general and vague. There are eight appellants involved plus allegation against 9 to 10 unknown persons. So this it is clear that there was a mob of 15 to 20 persons. Under such circumstances, it was necessary to specify the act of any of the persons who are named in the FIR. On the next

date, her supplementary statement came to be recorded. Even in that supplementary statement, there is no specific name or act mentioned by the informant.

. The learned APP has pointed out that there are four statements on the independent persons, belonging to upper caste who claimed to be eye witness. However in their statements, there is no specific role alleged against any one person, who are named as accused. The other statements are also there, which are recorded no 06.01.2023. However, in their statements also there is no specific allegation made against any of the persons. Coming to the judgment referred to by the learned Advocate for the respondent no.2. There is no dispute about the legal proposition that when the offence is attracted under the Atrocities Act that in view of the bar under Section 18 and 18-A, the application cannot be considered for anticipatory bail by application Section 438 of the Code of Criminal Procedure and therefore the Court has to first see as to whether the offence itself is made out or not? This Court finds that by looking at the FIR and also the supplementary statements, there is no specific role alleged against any of the appellants, so far as attracting an offence under the Atrocities Act is concerned.

9. However at the same time, this Court finds that there is rivalry in the village on count of politics and it would be necessary to impose certain conditions on the appellants. Hence the following order.

ORDER

- (i) Both the Appeals are allowed.
 - (ii) In the event of arrest of the Appellants, they shall be released on bail in connection with FIR No.005/2023 registered with Ghargaon Police Station, Dist. Ahmednagar on executing P. R. bond and solvent surety in the sum of Rs. 15,000/- (Rs. Fifteen Thousand only) each.
 - (ii) They shall attend the concerned Police Station as and when called by the Investigating Officer.
 - (iii) They shall not tamper with the evidence and shall not try to contact any of the witnesses.
10. With this, both the appeals are disposed off.

[KISHORE C. SANT, J.]

Najeeb.