

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.102 OF 2023

SWAPNIL SURESH PAWAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Appellants : Mr. Dond Manoj A.
APP for Respondent No.1 - State : Mrs. V. S. Choudhary
...

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

DATE : February 08, 2023.

ORDER :-

. Present appeal has been filed under Section 14-A(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") to challenge the rejection of the application under Section 438 of the Code of Criminal Procedure of the present appellants by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ahmednagar in Bail Petition No.2132 of 2022 on 25.01.2023.

2. Heard learned Advocate Mr. M. A. Dond for the appellants and learned APP Mrs. V. S. Choudhary for respondent No.1 - State. It is not

even necessary to issue notice to respondent No.2.

3. It has been contended that perusal of the FIR would show that the main allegations in respect of Section 376(2)(n) of the Indian Penal Code are against one Sagar @ Sukhdev Nandu Pawar, who is not before this Court. Further, the FIR appears to be motivated. The prosecutrix is 36 years old lady, who was already married, but it appears that she was residing separately from her husband. She states that she was in relationship with original accused No.1 since 2018. It is then stated that accused No.1 used to give her promise to marry and had sexually exploited her. It is then also stated that on 26.11.2022, she came to know about accused No.1 involved in another lady and thereafter accused No.1 was not picking the phones of the prosecutrix. According to the appellants, the story regarding incident dated 01.12.2022 at about 7.00 p.m. is concocted to implicate the relatives of accused No.1. Accused No.3 is the mother of accused No.1. Accused No.2 is the son of accused No.3 and brother of accused No.1. The alleged incident dated 01.12.2022 at 07.00 p.m. is stated to have occurred in the house of the accused and therefore, it does not attract the ingredients of Section 3(1)(r) and 3(1)(s) of the Atrocities Act in view of the fact that it was not within the public view. As regards the offence under Section 3(1)(w)(i) and 3(1)(w)(ii) of the Atrocities Act, it is also not attracted in view of the fact that none of

the appellants had touched the prosecutrix with sexual intent. Even as regards Section 3(2)(va) of the Atrocities Act is concerned, in view of the fact that the FIR is motivated, it cannot be said that even that offence is attracted and, therefore, appellants ought to have been protected by the learned Special Judge. Further, by pointing out photocopy of the marriage certificate, it has been pointed out by the learned Advocate for the appellants that original accused No.1 has married to a lady, who was also a member of Scheduled Caste. Therefore, there was no question of having grudge against a particular community or caste. Learned Advocate for the appellants, therefore, prayed for the protection.

4. Per contra, the learned APP strongly opposed the grant of even interim protection. She supported the reasons given by the learned Special Judge and submits that since the application under Section 438 of the Code of Criminal Procedure was barred in view of Section 18 and 18-A of the Atrocities Act, the learned Special Judge was justified in rejecting the application.

5. We find substance in the submissions of the learned Advocate for the appellants as regards the ingredients of Sections 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(1)(w)(ii) of the Atrocities Act may not be made out, however, when we are considering the facts of the case and also

the ratio laid down in ***Prathvi Raj Chauhan Vs. Union of India and others, [(2020) 4 SCC 727]***, we will have to consider the *prima facie* case based on the allegations in the FIR. As regards the present appellants are concerned, their role is in respect of incident dated 01.12.2022 at about 7.00 p.m. It is stated that the prosecutrix had gone to the house of original accused No.1, where the present appellants were present. Original accused No.1 had given her abuses in the name of caste and she says that she was taken to the room in house and was beaten by accused No.1. When she tried to escape from the clutches of accused No.1, present appellant No.3 had pulled hair of the prosecutrix and made her to lie on the ground and thereafter appellant Nos.1 and 2 had assaulted her by fists and kicks. It is then stated that they all in chorus had abused her in the name of caste, gave her threat to kill if she tries to contact accused No.1. All these contentions/statements would attract Section 323 of Indian Penal Code and taking into consideration the Schedule to Atrocities Act in respect of Section 3(2)(va) thereof, Section 323 of Indian Penal Code is applicable. Even Section 506 of Indian Penal Code is applicable. Therefore, *prima facie* those Sections are attracted including Section 3(2)(va) of the Atrocities Act. Further, in view of Section 18 of the Atrocities Act, when *prima facie* case is made out in respect of the offences under the Atrocities Act, the application for

anticipatory bail would be barred. Therefore, we do not find any illegality or error committed by the learned Special Judge in rejecting the application. There is no merit in the present appeal. It deserves to be dismissed. Accordingly, it is dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm