

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

CRIMINAL APPEAL NO.218 OF 2023

- 1) Gajanan S/o Sayanna Rajarwar,
Age-40 years, Occu:Service,
R/o-Sant Goroba Ashram Shala,
Kundalwadi, Taluka-Biloli, District-Nanded,
- 2) Ravi S/o Sayanna Rajarwar,
Age-38 years, Occu:Service,
R/o- N D -120, Guruwar Bazar,
Cidco, Nanded,
- 3) Datta @ Dattatray S/o Sayanna Rajarwar,
Age-42 years, Occu:Service,
R/o-Sant Goroba Ashram Shala,
Kundalwadi, Taluka-Biloli, District-Nanded,

...APPELLANTS

VERSUS

- 1) The State of Maharashtra,
Through the Superintendent of Police,
Nanded,
- 2) The State of Maharashtra,
Through Investigating Officer,
Gramin Police Station, Nanded,
Taluka and District-Nanded
- 3) Mahendra S/o Nandev Gawali,
Age-31 years, Occu:Labour,
R/o- N D -120, Guruwar Bazar,
Cidco, Nanded.

...RESPONDENTS

A N D

CRIMINAL APPEAL NO.219 OF 2023

Dnyaneshwar S/o Laxman Potgante,
Age-38 years, Occu:Agri.,
R/o-Kivla, Taluka-Loha,
District-Nanded.

...APPELLANTS**VERSUS**

- 1) The State of Maharashtra,
Through the Superintendent of Police,
Nanded,
- 2) The State of Maharashtra,
Through Investigating Officer,
Gramin Police Station, Nanded,
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- 3) Mahendra S/o Nandev Gawali,
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R/o- N D -120, Guruwar Bazar,
Cidco, Nanded.

...RESPONDENTS

...
Mr.P.R. Katneshwarkar Advocate h/f. Mr. S.N. Janakwade,
Advocate for Appellants in both the Appeals.
Mr.R.D. Sanap, A.P.P. for Respondent Nos.1 and 2.
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**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 21st MARCH, 2023

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

1. Both the Appeals are filed by the accused arrayed in Crime
No.778 of 2022 registered with Nanded Rural Police Station,

District-Nanded for the offence punishable under Sections 326, 323, 504, 506 read with Section 34 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 3(1)(d) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act"). The appellants have challenged the rejection of their applications under Section 438 of the Code of Criminal Procedure by the learned Special Judge under the Atrocities Act / Additional Sessions Judge-1, Nanded, District-Nanded dated 6th March 2023 in Misc. Criminal Application (Bail) No.3 of 2023 and Misc. Criminal Application (Bail) No.6 of 2023, respectively, by filing these Appeals under Section 14-A(2) of the Atrocities Act.

2. Heard learned Advocate Mr. Katneshwarkar holding for learned Advocate Mr. Janakwade for the appellants and learned APP Mr. Sanap for respondent Nos.1 and 2.

3. It has been vehemently submitted on behalf of the appellants, after taking us through the contents of the First Information Report (for short "FIR"), that the FIR is based on concocted and false story. There is delay of about 72 hours in filing FIR, which has not been explained at all, therefore, it can be presumed that the said FIR is out of vengeance. The

appellants are the teachers and social workers of a political party. The FIR does not *prima facie* make out offence under the Atrocities Act. In fact the informant i.e. present respondent No.3 and his entire family has adopted the Christianity and therefore, he cannot now claim that he is a member of scheduled caste. Respondent No.3 – informant himself is a habitual offender. In all six offences are pending against the informant which were registered with Nanded Rural Police Station and the list of the same has been given by the appellants. Even against the witnesses who have been stated in the FIR, there are offences pending. Therefore, it can be said that the informant and the witnesses who are facing the prosecution appears to have designed the FIR. The custodial interrogation of any of the appellants, especially appellant No.2 in Criminal Appeal No.218 of 2023, who is stated to have been armed with a weapon, is not required. The alleged injuries sustained by the informant cannot be said to have been caused by use of an iron rod. The appellants in Criminal Appeal No.218 of 2023 are brothers inter-se and all of them are Government servants. Appellant No.1 is serving as Warden with Sant Goroba Prathmik Ashram Shala at Kundalwadi, Taluka-Biloli, District-Nanded and appellant No.3 is serving as Headmaster in the said Ashram school. Appellant

No.2 is serving as teacher at Ambika Vidyalaya, Nanded. They were present in the school on the day of incident and therefore, it shows that there is false implication of the appellants. The learned Advocate appearing for the appellants further submitted that Section 3(1)(d) of the Atrocities Act is absolutely not applicable to the facts of the case, which is in respect of garlanding a member of scheduled caste or scheduled tribe with footwear or parading naked or semi-naked. The learned Special Judge had not considered all these aspects and rejected the applications in casual manner and therefore, till the papers are perused the appellants need to be protected and the learned Advocate for the appellants prayed for the interim relief.

4. Learned Advocate for the appellants has relied on the decision in ***Jagdish Sajjankumar Banka vs. State of Maharashtra, 2023 DGLS (Bom.) 729***. The Coordinate Bench at the Principal Seat has reiterated, on the basis of the decision in ***Vilas Pandurang Pawar and another vs. State of Maharashtra and others, (2012) 8 SCC 795, Prathvi Raj Chauhan vs. Union of India and others, (2020) 4 SCC 727***, that if the FIR does not make out a *prima facie* case for the applicability of the provisions of the Atrocities Act, then the bar

created under Section 18 and 18-A(1) of the Atrocities Act, will not apply.

5. Per contra, the learned APP strongly opposed the Appeals and submitted that mentioning of a wrong section will not give any advantage to the appellants. It will have to be then considered under which provisions of law the facts of the case would make out the offence. There is no evidence produced by the appellants to show that the informant and his family has adopted the Christianity. Informant has given his caste in the FIR, which is *prima facie* indicative of the fact that he is member of scheduled caste. It would be then the matter of investigation. Further, informant has stated in the FIR that the incident has taken place at around 9.30 p.m. on 27th December 2022 when he was sitting on the cement bench installed in front of Hanuman temple near his house. It was the public place and then informant states that the appellants had abused him in the name of caste. Appellants had assaulted him by means of sword and iron rod. Informant has also stated that when he has raised his voice, at that time his sister and persons from his *galli* had come to the place and rescued him. Therefore, the ingredients of the offence are *prima facie* made out and learned APP submitted that Sections 3(1)(r), 3(1)(s), 3(2)(v) of the Atrocities

Act are attracted in the case and therefore, the application under Section 438 of the Code of Criminal Procedure was not maintainable. Rejection of the application by the learned Special Judge was legal and and correct.

6. At the outset it is to be noted that the appellants have prayed for the interim protection and respondent No.3 is yet to be served. However, before admitting the appeal it is then required to be considered, as to whether the Appeal is worth admitting. Consequently, it is also required to be considered, as to whether the learned Special Judge was justified in rejecting the application under Section 438 of the Code of Criminal Procedure as barred under Section 18 and 18-A(1) of the Atrocities Act.

7. Perusal of the FIR would show that the incident is alleged to have taken place on 27th December 2022 and the FIR has been lodged on 30th December 2022. However, it is further stated that at the time of recording FIR, the informant was admitted in Ward No.11, Civil Hospital, Vishnupuri, Nanded. Under such circumstance, it is required to be considered by the trial Court ultimately, as to whether the said delay was fatal or

not. But in isolation the point of delay cannot be so considered. Further, it is to be noted that in FIR the informant has stated that he was still undergoing the treatment. Whether that can be considered as a reasonable ground, but informant has given the reason for delay in the FIR.

8. It has been stated in the FIR that after taking the dinner informant was sitting on the cement bench installed in front of Hanuman temple around 9.30 p.m. on 27th December 2022. He was watching mobile at that time. Informant states that at that point of time accused Gajanan came along with accused Dnyaneshwar. Informant had no idea about the full name of the accused Dnyaneshwar but it appears that he was knowing Dnyaneshwar. After they had come to that place, they started insulting the informant by saying that " अरै मांगच्या तु इथे कसकाय बसलास ". Meaning thereby, after giving abuses in the name of caste, they asked informant as to how he was sitting at that place. He told them that he was watching mobile. Again they repeated the same question and informant answered it in the same way. Then they told him that he should not sit there. Informant was then slapped and accused Gajanan caught hold of collar of his shirt and asked accused Dnyaneshwar to call the

brothers and also bring the material (सामान). Informant then says that after a while accused Datta, Ravi and Dnyaneshwar came there. Datta was holding sword. Accused Ravi then stated that in spite of informant has been told not to sit there, he is sitting and therefore he should be assaulted. The word for the assault is in filthy language and it had abuse in the name of the caste. It is then stated that accused Gajanan took iron rod from the hands of accused Ravi and assaulted the informant to the right elbow. It has caused fracture to the right hand of the informant. It is then stated that accused Ravi had given him kicks and fist blows. Accused Dnyaneshwar then assaulted informant by wooden stick, accused Datta had then assaulted him on his hands and legs, as a result of which informant sustained covert injuries to the legs. His sister Baby and one Prajapati Suryawanshi came to the spot and also one Akash Gudmalwar, Asif Shaikh, Namu Shivbhakti had also come there. They rescued the informant and all the accused persons then left the place.

9. Thus, it can be seen from the contents of the FIR that the accused persons are from the same vicinity and therefore, *prima facie* there is material to say that the accused would be knowing the caste of the informant. Ignorance, if any, then will have to be

proved when the informant says that the accused persons are resident of his *galli*. Role has been attributed to each of the accused and even the witnesses were present when the incident took place. Therefore, *prima facie* the offences under Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the Atrocities Act are made out. The corollary of the same would be the bar under Section 18 and 18-A(1) of the Atrocities Act would get attracted and therefore, the bail applications under Section 438 of the Code of Criminal Procedure were not maintainable.

10. Independently also it is to be noted that the learned Special Judge appears to have not adopted the proper procedure. The impugned orders state that the learned Special Judge has heard only the Advocate for the applicant and APP for the State. No record has been produced before this Court now by the appellants that any notice was given to the informant in view of Section 15A of the Atrocities Act. We would like to rely on the decision in ***Hariram Bhambhi vs. Satyanarayan and another, 2021 SCC OnLine 1010***, wherein it has been observed that victims are often relegated to the role of being a spectator in the criminal justice system. The victims of crime often face hurdles in accessing justice from the stage of filing the

complaint to the conclusion of the trial and therefore, those rights of the victims have been acknowledged by the Hon'ble Supreme Court as well as those are incorporated under Section 15-A of the Atrocities Act. In connection with the said provision, in the aforesaid decision, it has been held in Paragraph Nos. 13, 14, 15 and 18 as under:-

" 13. Section 15A of the SC/ST Act contains important provisions that safeguard the rights of the victims of caste-based atrocities and witnesses. Sub-sections (3) and (5) of Section 15A specifically make the victim or their dependent an active stakeholder in the criminal proceedings. These provisions enable a member of the marginalized caste to effectively pursue a case and counteract the effects of defective investigations. Sub-sections (1) to (5) of Section 15A are extracted below:

"15A(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victims age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.”

(emphasis added)

“ 14. Sub-section (3) of Section 15A confers a statutory right on the victim or their dependents to reasonable, accurate, and timely notice of any court proceeding including a bail proceeding. In addition, sub-section (3) requires a Special Public Prosecutor or the State Government to inform the victim about any proceeding under the Act. Sub-section (3) confers a right to a prior notice, this being evident from the use of the expression “reasonable, accurate, and timely notice of any court proceeding including any bail proceeding”. Sub-section (5) provides for a right to be heard to the victim or to a dependent. The expression “dependent” is defined in Section 2(bb) thus:

“2(bb) “dependent” means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance;”

“ 15. The provisions of sub-section (3) which stipulate the requirement of notice and of sub-section (5) which confers a right to be heard must be construed harmoniously. The requirement of issuing a notice facilitates the right to be heard.”

“ 18. The finding of the Gujarat High Court that the requirement of issuing notice of a court proceeding to a victim or a dependent under Section 15A(3), in order to provide them an opportunity of being heard, is mandatory, finds echo in multiple High Court decisions 13 including a decision of the Rajasthan High Court 14. We find ourselves in agreement with the proposition and hold that sub-sections (3) and (5) of Section 15A are mandatory in nature.”

11. Further, it has been observed in Paragraph No.22 in the aforesaid decision of ***Hariram Bhambhi vs. Satyanarayan and another*** (supra), that:-

“ 22. We also emphasize that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well.”

12. It will not be out of place to mention here that in **Criminal Appeal No.919 of 2022** (Amol s/o Babasaheb Sonawne @ Sonu Fitter vs. the State of Maharashtra and another) and the companion matters, decided by this Court on 20th February 2023, this Court, after taking note of the decision in ***Hariram Bhambhi vs. Satyanarayan and another*** (supra) and other decisions, has made following observations in Paragraph No. 15 of the order:-

“15. We are constrained to observe that, many Courts/ Special Judges are not following the said procedure which is in fact in derogation to the mandate of the law. Secondly, even if the notice is given, the order that is passed on the bail application is many times silent about

the submissions/ say put forth by the victim. When the statutory right is given of being heard to the victim, then the natural corollary would be that those submissions which have been put forth by the victim should be reflected in the order by the learned Special Judge. We had, therefore, called the copy of relevant Roznama of the Special Case No.141 of 2022, which reflects that as regards the bail application Exhibit 18 which was filed by accused No.1, notice was issued to the informant. She appeared before the Court. However, it appears that adjournment was sought to file say on behalf of the prosecution, as well as the informant on the adjourned date i.e. 12th October 2022. On 19th October 2022, Presiding Officer was on leave. The matter was taken up on 21st October 2022, on which date the prosecution filed say but informant sought adjournment. Thereafter it appears that till the application was decided, the informant – victim did not appear and she was not heard at all. The impugned order below Exhibit-18 also does not say that the Special Judge had heard the victim – informant. Same is the case as regards the other two appellants. As regards accused No.5 is concerned, he has given application for bail at Exhibit-3. Notice was issued to the informant and on the day of appearance she filed application for adjournment and in the meantime bail application was moved by accused No.6. Notice in respect of that application was also issued to the informant but it appears that she never filed say. Again, in the meantime accused No.4 i.e. one of the appellant here, made application for bail and there is no endorsement that notice in respect of application Exhibit-13 was ever issued to the informant. The impugned orders in other two Appeals are also silent on this aspect of

issuing notice to the informant and giving an opportunity to her to make submissions. Certainly, in these cases the applications have been rejected and no prejudice can be said to have been caused to the informant. But the fact remains is that the learned Special Judge has not adhered to the procedure that is contemplated in bail applications in which the offence under the Atrocities Act is involved. Note also can be taken of the decision of Three Judge Bench of the Hon'ble Supreme Court in ***Jagjeet Singh and others vs. Ashish Mishra Alias Monu, (2022) 9 SCC 321***. In fact in this case there was no question of offences under the Atrocities Act, yet, the Hon'ble Supreme Court has upheld the rights of the victim to be heard and to participate in the proceedings before the Courts. Note has been taken in respect of the provisions under the Atrocities Act which make the legal obligation to hear the victim and then it has been reiterated that the rights of the victim are totally independent, incomparable, and not accessory or auxiliary to those of the State under the Code of Criminal Procedure and therefore, the presence of 'State' in the proceedings, would not tantamount to according a hearing to a victim of the crime. Under such circumstance, when such wide rights are given to the informant / victim and those are acknowledged, it is mandatory on the part of the Special Judges to issue notice to the victims / informants, as the case may be in view of Section 15-A(3) of the Atrocities Act and then to proceed to hear them under Section 15-A(5) of the Atrocities Act."

13. The aforesaid order passed by this Court in Criminal Appeal No.919 of 2022 and other companion matters, has been

circulated throughout the State, still on 6th March 2023, the learned Special Judge has not observed the said procedure of giving notice to the informant and hearing him. Therefore, in any way, the learned Special Judge could not have allowed the said applications on 6th March 2023.

14. Learned Advocate appearing for the appellants had shown the criminal antecedents of the informant and the witnesses. However, there is no such provision that those antecedents are required to be considered from the point of view that it is the false implication of the appellants. In fact either in the application under Section 438 of the Code of Criminal Procedure or in the Appeal memo we could not get any such reason as to why the informant would have thought of implicating the appellants. The plea of alibi for appellant No.3 in Criminal Appeal No.218 of 2023 would be of no importance because except his identity card, there is nothing.

15. Taking into consideration the injuries sustained by the informant, which appear to be of grievous in nature, that too stated to have been caused due to sword, iron rod, wooden stick etc., the custodial interrogation of the appellants would be

necessary and therefore, both the Appeals cannot be taken to be fit cases where the discretionary relief can be granted.

16. In view of the fact that the original applications under Section 438 of the Code of Criminal Procedure were barred under Section 18 and 18-A of the Atrocities Act, there was no illegality or error committed by the learned Special Judge while rejecting those applications and therefore at the threshold both the Appeals deserve to be dismissed.

17. Accordingly, both the Appeals are dismissed.

[Y.G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE