

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

CRIMINAL APPEAL NO.266 OF 2023

- 1) Dr. Rajendra Ambadas Band,
Age-48 years, Occu:Medical Practitioner,
R/o-"Gopika Niwas", Someshwar Nagar,
Beed, Tq. & Dist-Beed,
- 2) Jivan Govardhan Band,
Age-39 years, Occu:Business,
R/o-"Sagar Niwas", Shivaji Dhande Nagar,
Beed, Tq. & Dist-Beed,
- 3) Sadashiv Ambadas Band,
Age-64 years, Occu:Pensioner,
R/o-"Gopika Niwas", Ganpatinagar,
Beed, Tq. & Dist-Beed.

...APPELLANTS

VERSUS

- 1) The State of Maharashtra,
Through Office In Charge,
Police Station, Shivaji Nagar,
Beed, Dist-Beed,
- 2) Pavan Navnath Gaikwad,
Age-35 years, Occu:Driver,
R/o-Purgrasta Colony,
Beed, Tq. & Dist-Beed.

...RESPONDENTS

...
Mr. Sudarshan J. Salunke Advocate for Appellants.
Mr. R.D. Sanap, A.P.P. for Respondent No.1 – State.
Mr. R.G. Hange Advocate for Respondent No.2.
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**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 17th APRIL, 2023

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

1. Present Appeal has been filed under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short "the Atrocities Act"), to challenge rejection of anticipatory bail application by learned Special Judge, Beed on 17th March 2023 filed by the present appellants. Present appellants have been arrayed as accused Nos.1 to 3 in Crime No.97 of 2023 registered with Shivajinagar Police Station, Beed for the offence punishable under Sections 307, 327, 324, 323, 504, 506 read with Sections 149, 143, 147, 148 of the Indian Penal Code, Sections 3(1)(r), 3(2)(va) of the Atrocities Act, and Section 3 and 4 read with Section 25 of the Arms Act. The appellants had filed Criminal Bail Application No.177 of 2023 before the learned Special Judge, Beed under Section 438 of the Code of Criminal Procedure, which came to be rejected.

2. Heard learned Advocate Mr. Salunke appearing for the appellants, learned APP Mr. Sanap for the State and learned Advocate Mr. Hange appearing for respondent No.2.

3. It has been vehemently submitted on behalf of the appellants that the learned Special Judge has not considered the facts properly and failed to consider that there was political motive behind the registration of the First Information Report (for short "FIR"). The learned Special Judge has in fact considered in Paragraph No.13 that the FIR is totally silent, as to when the abuses in the name of caste were given any independent witnesses were present and therefore, it is doubtful as to whether the provisions of the Atrocities Act are applicable. Therefore, there was no hurdle for considering the anticipatory bail application. The application appears to have been rejected on the ground that the allegations have been made that the applicants have used rifle (pistol), kukri and iron rod in the commission of crime and it is stated that one Sachin Ghodke was robbed off the gold chain and therefore, custodial interrogation would be necessary. Appellant No.1 is a medical practitioner, appellant No.2 is a businessman and appellant No.3 is the pensioner, aged 64 years, why they would rob any person when they are from well to do family. This Court had granted interim protection by order dated 29th March 2023 and the appellants have not misused the liberty. They have attended the police

station as directed and co-operated with the investigation. As the impugned order is bad in law, it deserves to be set aside.

4. Learned Advocate for the appellants, in support of his submissions, relied on the decision in ***Pravin S/o Shrimant Bhutekar vs. State of Maharashtra and another, 2010 ALL MR (Cri) 1223*** by the learned Single Judge of this Court, wherein it was held that when there is smell of political rivalry to the FIR and there is also no explanation for the delay in lodging the report, then even though there is bar under Section 18 of the Atrocities Act, exception was made out to grant anticipatory bail. Learned Advocate further relied on the three Judge Bench decision of the Hon'ble Supreme Court in ***Hitesh Verma vs. State of Uttarakhand and another, 2021 CRI. L.J. 1***, wherein it has been held that when the alleged act of abusing informant was within the four walls of the building and not within the public view, the offence under Section 3(1)(r) of the Atrocities Act is not made out merely because informant is belonging to a scheduled caste.

5. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the Appeal. Affidavit in reply has been filed on behalf of respondent No.2. It

has been submitted on behalf of them that the contents of the FIR are sufficient to attract the ingredients of offence under Section 3(1)(r) and 3(1)(s) as well as 3(2)(va) of the Atrocities Act. The accused persons were knowing the caste of the informant. In his affidavit in reply respondent No.2 has reiterated the same facts and submitted that the injury certificate of witness Sachin Ghodke reflects that he has sustained CLW on occipital region admeasuring 3 X 2 cm., and the CT Scan of said injury reflects that there was cerebral oedema with concussion. It was a grievous injury and it was with an intention to commit murder of Sachin Ghodke and therefore, offence was made out under Section 307 of the Indian Penal Code. It is also stated that wife of respondent No.2 hails from village of appellant No.1 and therefore, appellants had knowledge about the caste of the informant. The application under Section 438 of the Code of Criminal Procedure before the Special Judge was barred under Section 18 of the Atrocities Act. As per the said allegations pistol, iron rod and kukri have been used in the commission of the crime. Those weapons are required to be seized and therefore, custodial interrogation of the appellants was necessary. The learned Special Judge was justified in rejecting the application.

6. The contents of the FIR are that respondent No.2 – original informant is a member of scheduled caste and he says that around 10.30 p.m., on 1st March 2023 when he was proceeding in vehicle No. MH-24-BR-4141 along with victim Sachin Ghodke and they were in front of grocery shop in Gopika Nagar, then they found that 2 to 3 motorcycles were parked on the road. Informant had blown the horn and therefore appellant No.1 came out of the hospital and started asking him as to why he was blowing the horn. It is then stated that he has abused informant in the name of caste. Informant then told appellant No.1 that he is the son in law of the village and as to why he is speaking with informant in such a manner. Appellant No.1 asked them to get down from the car and asked them to come in his hospital. Thereafter the incident is stated to have been taken place inside the hospital. Though it has been alleged that appellant No.1 had abused in the name of caste by coming out of the hospital, yet there is no recital that the said abuses were heard by any third person, that means who is not the friend. Injured Sachin cannot be said to be the said third person who would have heard accused No.1 abusing the informant in the name of the caste. At this stage, we are not supposed to scan

the FIR in detail but the probability of any such event is also required to be considered. The informant says that when he found that 2 to 3 motorcycles were standing in front of a grocery shop, he had blown the horn of the vehicle. He is not stating that he has no sufficient space to take out his four wheeler ahead of the said spot. For how much time he was blowing the horn, is another question. Further the place was in front of hospital. Investigating Officer will have to consider, as to whether it was the silent zone. Even if it is not a silent zone, yet when the informant is stated to have blown the horn at 10.30 p.m., unless that act would have amounted to nuisance, nobody would have come on road. It could not have been in the dreams of appellant No.1 that the informant and victim Sachin would be passing by the car at the relevant time.

7. Another fact which is to be noted is that the entire FIR is silent as to how appellant No.1 was knowing respondent No.2 – informant and since when. Unless appellant No.1 would have been knowing the informant, there would not have been reason to abuse him in the name of the caste. In the affidavit in reply also the informant has stated that he is the son in law of the village i.e. his wife hails from the village of appellant No.1.

Therefore, it is doubtful, as to whether the FIR discloses offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act, so also under Section 3(2)(va) of the Atrocities Act, because unless there was knowledge about the fact that informant belongs to a particular caste, assault to him ought to have been because he belongs to the said caste for attracting the said offence. If we see the contents of the FIR, informant says that after the horn was blown by him, appellant No.1 came outside and directly abused him in the name of the caste and asked him as to why he is blowing the horn. That means, there was no other dialogue between them when appellant No.1 allegedly came out of the hospital. We hold that there was no bar under Section 18 or 18-A of the Atrocities Act for entertaining the application under Section 438 of the Code of Criminal Procedure by the learned Special Judge.

8. Another fact to be noted is that as per the FIR till informant, victim Sachin and appellant No.1 went inside the hospital; appellant Nos.2 and 3 i.e. original accused Nos.2 and 3 were not present. Therefore, the said alleged abuses, even if taken for the sake of arguments as it is, that bar is not applicable to appellant Nos.2 and 3. Therefore, there was

absolutely no hurdle for entertaining the application of appellant Nos.2 and 3 in clear terms. As per the FIR, the subsequent incident has taken place in the hospital. FIR itself says that after they entered into the hospital, the door was latched from inside. It is then stated that appellant No.1 had taken out pistol from his waist and put it on the head of the victim Sachin and he told that Sarpanch of the Grampanchayat is his man. The members might be belonging to victim's group but he should not raise any dispute in the Grampanchayat. Then the informant says that appellant No.2 had taken out knife or kukri like weapon and gave blow of the same on the head of Sachin. Appellant No.3 had then assaulted by iron rod on the head of the informant. Assault was also given on his right wrist and neck. He had also sustained bleeding injuries. Other 3 to 4 persons were present there who had assaulted them by slaps, kicks and fists and then they had abused the informant in the name of caste. Informant and Sachin were threatened to kill. Informant then says that appellant No.3 had snatched the gold chain from the neck of Sachin when he was lying in unconscious condition on the ground. It is then stated that all those three accused persons fled away. Informant then says that he called one Nikhil Naikwade and Sandeep Ghodke, who had taken them to hospital.

9. The ratio laid down in ***Hitesh Verma vs State of Uttarakhand and another*** (supra) would be applicable here, as the further incident has taken place within the four walls of the hospital. In ordinary parlance hospital could have been the public place, however, the informant is saying that after they entered the hospital, the accused had closed the door from inside. How many persons were there in the hospital, has not been explained. Therefore, offences under Section 3(1)(r) and 3(1)(s) of the Atrocities Act are apparently not made out. The incident is stated to have taken place around 10.30 p.m., on 1st March 2023, whereas the FIR has been lodged at 11.26 p.m. on 2nd March 2023. Thus, there appears to be delay in lodging the FIR and at this stage, the benefit of the same should be given to the appellants.

10. Learned Advocate for the appellants has relied on the FIR lodged by the wife of appellant No.1 on 3rd March 2023 around 10.08 p.m. Crime has been registered with Shivajinagar Police Station, Beed for the offence punishable under Sections 323, 327, 354, 452, 143, 147, 149, 504, 506 of the Indian Penal Code. It is against Sachin Ghodke and other persons and it

appears that the informant has been stated to be the unknown person for her. We do not want to go to the details of the said FIR because it is subsequent. The fact remains is that when informant – respondent No.2 was hospitalized then what history he has given to the hospital authorities and why the FIR was not got registered within the reasonable time, are the points which are required to be dealt with at the time of final hearing.

11. Appellants have also produced copy of the FIR vide Crime No.7 of 2021 registered with Peth Beed Police Station, District-Beed, which is against some other persons, but it is also under the Atrocities Act. It was tried to be submitted that respondent No.2 is in habit of lodging such reports. With respect to the learned Advocate for the appellants, we do not want to deal with this subject. Merely because respondent No.2 had earlier lodged the report invoking the Atrocities Act, that does not mean that he is in the habit of lodging the reports.

12. Learned Special Judge himself has raised doubts about the applicability of Atrocities Act but rejected the anticipatory bail on the ground that the weapons are required to be seized and the victim Sachin has been robbed off gold chain. Here the FIR has

to be considered from the political angle also. It has been shown that appellant No.1 was politically active, but then as regards accused Nos.2 and 3 are concerned, there is no such background. Actually appellant No.3 is the father of appellant No.1. That is also not sufficient to infer that some common talks would have taken place which would be then the *mens rea*.

13. We have given sufficient attendance to the appellants when their liberty was protected in the interim order. The Investigating Officer could have utilized the said opportunity, but still he is reporting that investigation is yet to be done in respect of the weapons. If he had interrogated the appellants then it could have laid to the discovery under Section 27 of the Indian Evidence Act. Even after granting sufficient opportunity, if the investigation has not been carried out in that direction, it cannot be said that the custodial interrogation of the appellants would be necessary. Learned Special Judge ought to have considered all these points. Since those points have not been considered, this Court would interfere and protect the liberty granted to the appellants. What was the motive for appellant Nos.2 and 3 to commit the said offence, is a question. The Appeal, therefore,

deserves to be allowed and accordingly following order is passed:-

ORDER

(I) Appeal stands allowed.

(II) The interim protection granted to the Appellants by this Court by order dated 29th March 2023 stands confirmed. It is thus clarified that in the event of arrest of appellants i.e. appellant No.1 – Dr. Rajendra Ambadas Band, appellant No.2 – Jivan Govardhan Band and appellant No.3 – Sadashiv Ambadas Band, in connection with Crime No.97 of 2023 registered with Shivajinagar Police Station, Beed for the offence punishable under Sections 307, 327, 324, 323, 504, 506 read with Sections 149, 143, 147, 148 of the Indian Penal Code, Sections 3(1)(r), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, and Section 3 and 4 read with Section 25 of the Arms Act, the appellants be released on PR and SB of Rs.15,000/- each, if already not released.

(III) Appellants shall remain present before the Investigating Officer i.e. Dy.S.P., Beed on every Monday, Wednesday and Friday between 3.00 p.m. to 6.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

(IV) Appellants shall not tamper with the evidence of the prosecution in any manner.

(V) Appellants shall not indulge in any criminal activity.

[Y.G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE