

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

CRIMINAL APPEAL NO. 293 OF 2023

Raees Hanif Sayyed,
Age-32 years, Occupation:Driver,
R/o-Tura, Tq-Pathri,
Dist-Parbhani.

...APPELLANT

VERSUS

1) The State of Maharashtra,
Through Office in Charge,
Police Station, Pathri,
Dist-Parbhani,

2) X
(Name withheld)

...RESPONDENTS

...
Mr. Sudarshan J. Salunke Advocate for Appellant.
Ms. V.S. Choudhari, A.P.P. for Respondent No.1 – State.
...

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

DATE : 10th APRIL, 2023

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

1. Present Appeal has been filed by the appellant under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act") to challenge the order of rejection of anticipatory

bail by the learned Special Judge under the Atrocities Act / Additional Sessions Judge-5, Parbhani, dated 20th March 2023.

2. The prosecution story is that the present respondent No.2, who is a major married lady, resides with her husband and two children. Her husband and she herself were doing the work of sugar cane cutting since last two years. They had gone to village Tura in October 2021 and completed the work by the end of February 2022. One tractor was engaged for the work of transporting sugar cane after it is cut till it is taken to sugar factory. The present appellant - accused was driving the said tractor. Accused had knowledge about the fact that respondent No.2 / informant is member of Scheduled Caste. In the month of January 2022 around 8.00 p.m., the accused had caught hold of the hand of the informant with ill-eye and told that he likes her. When informant told that she would inform the said act to her husband, accused had given threat to kill and therefore, she kept quiet. Informant has then stated in the First Information Report (in short "FIR") that on 18th January 2022 around 9.00 a.m., the accused had taken her forcibly in a field and had committed forcible intercourse with her. Accused had then given her threat to kill. In the month of March 2022 also accused had committed forcible intercourse with her. Accused had given phone call

around 11.30 p.m., on 18th March 2022 and asked as to why she was not talking with her. Her husband had then seen the call record and upon inquiry, she told about the said fact to the husband. Later on the informant came to know that she was pregnant and she was sure that she was not pregnant from her husband. She was aware about the fact that her pregnancy was from the accused. Informant had also consulted the doctor, who had then advised her for abortion. Her husband then gone to the accused to ask as to why he had done the said act. From the said dispute the accused had lodged a report against her husband resulting in lodging of FIR for the offence under Section 307 of the Indian Penal Code. Due to fear of defamation informant had not immediately lodged any report but then she ultimately lodged the report on 23rd February 2023.

3. Present appellant had filed application under Section 438 of the Code of Criminal Procedure vide Criminal Bail Application No.166 of 2023 before the learned Special Judge under the Atrocities Act, Parbhani and as aforesaid, the said application has been rejected on 20th March 2023.

4. We have heard learned Advocate Mr. Salunke for the appellant and learned APP Ms. Choudhari for the State.

5. At this stage itself, we would like to say that upon consideration of the impugned order, we could find out that though present respondent No.2 / informant was arrayed as respondent No.2 in the bail application, we could not find a single sentence in the impugned order stating that notice was served on the informant and she was heard. The learned Special Judge appears to have not adopted the proper procedure. When we made inquiry with the learned Advocate for the appellant, taking instructions from the Advocate who represented the appellant before the Special Judge; he submitted that notice was issued to the victim – respondent No.2 and she had filed copy of one non-cognizable offence across the Bar. We are unable to find any reference of the same in the impugned order. Learned Special Judge ought to have considered the substantive right that has been given to the victim under Section 15-A 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.”

6. 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.”

7. 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."

8. The aforesaid order passed by this Court in Criminal Appeal No.919 of 2022 and other companion matters, has been circulated throughout the State and still the learned Special

Judge, Parbhani, in the impugned order, is silent as to whether he had heard the victim- informant or not. We would like to take the things further. When the victim in such matters are served and if they are unable to engage Advocate because of their financial constraints or otherwise, then such Special Courts should provide legal aid to those victims. The Legal Services Authorities Act provides for giving free legal aid to the members of the scheduled caste or scheduled tribe. Further, it can also be said that such legal aid should be given or Amicus Curiae should be appointed to represent the cause of such victim even in case of failure of the victim to remain present after due service of notice. When it is a substantive right that has been given to a particular class of litigants, then it should be the endeavour of the Courts to respect the said legal right.

9. In view of the fact that the present proceeding is Appeal in which if this Court has to allow the Appeal; would require to set aside the impugned order which was not passed by adopting due procedure, the parties are required to be relegated to the Special Judge and directions are required to be given to the learned Special Judge to adhere to the proper procedure in view of the observations above. Hence, we pass following order:-

ORDER

(I) The Appeal stands partly allowed.

(II) The order passed by the learned Special Judge under the Atrocities Act / Additional Sessions Judge-5, Parbhani dated 20th March 2023 in Criminal Bail Application No. 166 of 2023, stands set aside.

(III) The said Criminal Bail Application No.166 of 2023 stands restored on the file of learned Special Judge under the Atrocities Act, Parbhani. The learned Special Judge to issue notice to respondent No.2 / original informant once again as contemplated under Section 15-A(3) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and after giving opportunity of hearing to the informant, should decide the matter on its own merits.

(IV) We clarify that if legal aid is required to be given, then that should be provided to the victim – informant.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE