

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.358 OF 2023

Ashok s/o Vishnudas Sharma
Age: 52 years, Occu.: Labour,
R/o. Parsavat Nagar, Parbhani,
Tq. and Dist. Parbhani

.. Appellant

Versus

1. The State of Maharashtra
Through Police Station Officer,
Kotwali Police Station,
Parbhani, Tq. and Dist. Parbhani

2. XYZ

.. Respondents

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Mr. S. S. Gangakhedkar, Advocate for the appellant.

Mr. S. J. Salgare, APP for respondent No.1 – State.

Ms. Angha N. Pedgaonkar, Advocate for respondent No.2. (Appointed)

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

DATE : 26th July, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeal has been filed by the original accused under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) to challenge the rejection of bail application i.e. Criminal Miscellaneous

Application (Bail) No.260 of 2023 under Section 438 of the Code of Criminal Procedure by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Parbhani on 12.04.2023.

2. Heard learned Advocate Mr. S. S. Gangakhedkar for the appellant, learned APP Mr. S. J. Salgare for respondent No.1 – State and learned Advocate Ms. Angha N. Pedgaonkar, who is appointed to represent the cause of respondent No.2.

3. It has been vehemently submitted on behalf of the appellant that perusal of the FIR would show that respondent No.2 – informant is a 40 years old lady. She was married about 20 years prior to the incident and she has daughter aged 20 years and son aged 18 years. Her daughter is also married. Son is stated to be residing with her husband and she alone resides at a different place. She is serving as a security guard. She also says that as her relationship with her husband became strained, they got divorce about 10 years ago. She got acquaintance with the appellant four years prior to the incident and she then says that by giving promise to marry, he started visiting her residence. She asked the appellant as to when he is married, how they would reside. Then accused replied that she should not take tension, but he would maintain both the ladies, that means his wife as well as informant. She specifically states that the appellant kept illicit relations with her since last about three years and though she was insisting

that he should marry, he was avoiding on one or the other pretext. She states that the last incident was occurred on 02.02.2023, when she says that appellant promised to marry and when she was getting ready, he went out of the house and when she gave phone call, he abused her in the name of caste. He again come to her house and assaulted her and abused her in the name of caste. He also gave threat to kill and then she says that accused had knowledge about the caste of the informant. All these contents would show that the informant was a consenting party and now when things are not going in her favour, it appears that she has lodged the report with *mala fide* intention. The FIR has been lodged on 20.03.2023, which can be said to be a belated action on her part. Prior to that the appellant had made a complaint to District Superintendent of Police, Parbhani on 27.01.2023 against the informant as she had given him threats to implicate in false case. All these factors were not considered by the learned Trial Judge and, therefore, the appeal deserves to be allowed.

4. Per contra, the learned APP and learned Advocate appointed to represent respondent No.2 strongly opposed the appeal and supported the reasons given by the learned Special Judge. They submitted that now the charge-sheet is filed and it can be seen that there was eye witness to the incident of abuses in the name of caste. The neighbour had heard the appellant giving abuses in the name of caste and, therefore, there was bar

to the application under Section 438 of the Code of Criminal Procedure in view of Section 18 and 18-A of the Atrocities Act. The rejection of application is proper.

5. As the contents of the FIR are already narrated, we do not want to reproduce the same. It can be clearly seen from those contents that the informant had the knowledge that the appellant was married, still she had kept physical relations with the appellant. She has specifically said that she had kept illicit relations with the appellant. Under the said circumstance, the alleged incident dated 02.02.2023 does not inspire confidence at the stage. Now, as regards the last incident i.e. 02.02.2023 is concerned, the case is then tried to be brought on record under Section 3(1)(r) and 3(1)(s) of the Atrocities Act, when it is stated that abuses were given in the name of caste. If we consider the spot panchanama, then the spot is inside the house. It is not stated in the FIR or in the statement of the alleged eye witness that accused was outside the house and he was abusing the informant, who was inside the house. The said eye witness has specifically stated that he heard the sound of quarrel around 10.30 to 11.00 a.m. on 02.02.2023 from the house of the informant. Therefore, he went near her house and he heard the voice of appellant, who was abusing the informant in the name of caste. He intervened and separated the accused and the informant and then the informant asked the appellant to go out of the

house. That means the incident appears to have taken place inside the house, which cannot be said to be in the public view. These facts will not even attract Section 3(1)(w)(i)(ii) of the Atrocities Act, as the words or acts or gestures allegedly heard by the neighbour were not of sexual nature towards the woman belonging to Scheduled Caste. As the case does not appear to be attracting offence under the Atrocities Act and there is *prima facie* contents showing that she is the consenting party, the learned Special Judge, under the Atrocities Act, ought to have considered the facts properly. Rejection of application was not justified and, therefore, interference is required. Hence, the following order :-

ORDER

- I) The Criminal Appeal stands allowed.
- II) The order passed below Exhibit-01 in Miscellaneous Criminal (Bail) Application No.260 of 2023 dated 12.04.2023 by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Parbhani stands set aside. The said application stands allowed.
- III) The interim protection granted by this Court earlier to the appellant vide order dated 28.04.2023 is hereby confirmed and made absolute. In other words, in the event of arrest of appellant – **Ashok Vishnudas Sharma** in connection with Crime No.66 of 2023 registered with Kotwali Police Station, District Parbhani for the

offences punishable under Sections 376, 376(2)(n), 323, 504, 506 of Indian Penal Code and under Sections 3(1)(w)(i)(ii), 3(2)(va) and 3(1)(r)(s) of the Atrocities Act, he be released on P. R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each, if not already released.

IV) The appellant shall not tamper with the evidence of the prosecution in any manner.

V) He should remain present before the Investigating Officer as and when required and shall cooperate with the investigation.

VI) He shall not indulge in any criminal activity.

VII) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm