

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

CRIMINAL APPEAL NO.455 OF 2023

- 1 Jayshree Prabhakar Kingre,
Age 28 yrs., Occ. Advocate,
R/o Chudhary Nagar, Mantha Road,
Jalna.
- 2 Gajanan Prabhakar Kingre,
Age 25 yrs., Occ. Farmer,
R/o Chudhary Nagar, Mantha Road,
Jalna.
- 3 Rajendra Prabhakar Kingre,
Age 24 yrs., Occ. Farmer,
R/o Chudhary Nagar, Mantha Road,
Jalna.
- 4 Rambhau Kisan Kalkumbe,
Age 40 yrs., Occ. Farmer,
R/o Antrwala, Post Manegaon,
Tq. & Dist. Jalna.
- 5 Rajesh Pralhadrao Kalkumbe,
Age 33 yrs., Occ. Farmer,
R/o Sawangi Talav, Jalna,
Tq. & Dist. Jalna.
- 6 Vitthal Karbhari Jadhav,
Age 41 yrs., Occ. Farmer,
R/o Sawangi Talav, Jalna,
Tq. & Dist. Jalna.

**[Appeal is disposed of against appellant
Nos.2 to 6 vide order dated 04.07.2023.]**

... Appellants

... Versus ...

- 1 The State of Maharashtra
Through Police Station Officer,
Police Station Seoli,
Tq. & Dist. Jalna.
- 2 Nilam Pralhad Randhve,
Age 43 yrs., Occ. Farmer,
R/o Sawangi Bardi,
Tq. & Dist. Jalna.

... **Respondents**

...

Mr. G.M. Deshmukh, Advocate for appellants

Mr. A.M. Phule, APP for respondent No.1

Mr. D.G. Nagode, Advocate for respondent No.2

...

WITH

CRIMINAL APPEAL NO.563 OF 2023

Rajendra Prabhakar Kingre,
Age 24 yrs., Occ. Farmer,
R/o Chudhary Nagar, Mantha Road,
Jalna.

... **Appellant**

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station Officer,
Police Station Seoli,
Tq. & Dist. Jalna.
- 2 Nilam Pralhad Randhve,
Age 43 yrs., Occ. Farmer,
R/o Sawangi Bardi,
Tq. & Dist. Jalna.

- 3 Mr. More,
Assistant Police Inspector,
Police Station, Mojpuri,
Tq. & Dist. Jalna.
- 4 Satish Shriwas,
Police Station, Mojpuri,
Tq. & Dist. Jalna.

... **Respondents**

...

Mr. G.M. Deshmukh, Advocate for appellant

Mr. A.M. Phule, APP for respondent No.1

Mr. D.G. Nagode, Advocate for respondent No.2

...

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

RESERVED ON : 25th JULY, 2023

PRONOUNCED ON : 11th AUGUST, 2023

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Both the appeals are under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for the sake of brevity hereinafter referred to as 'the Atrocities Act') challenging the respective orders by the learned Special Judge, under the Atrocities Act, Jalna, thereby rejecting the bail applications. The appellant No.1 in Criminal

Appeal No.455 of 2023 had filed application under Section 438 of the Code of Criminal Procedure bearing Criminal Miscellaneous Application (Bail) No.486/2023 and it came to be rejected on 11.05.2023. It will not be out of place to mention here that there were in all six appellants in Criminal Appeal No.455 of 2023, however, a statement was made on 04.07.2023 that appellant Nos.2 to 6 came to be arrested on 08.06.2023 and, therefore, by order dated 04.07.2023 the appeal as against them was disposed of as it was rendered infructuous. Therefore, the said appeal proceeded only for appellant No.1 (henceforth referred to as 'original accused No.1', as has been referred in the First Information Report). Criminal Appeal No.563 of 2023 is filed by original accused No.3 in the First Information Report and he had filed Criminal Bail Application No.681/2023 before the Special Judge under Section 439 of the Code of Criminal Procedure and his bail application came to be rejected on 26.06.2023. Both the appellants were the accused in Crime No.57/2023 filed at the behest of respondent No.2 – original informant with Seoli Police Station, Dist. Jalna, for the offence punishable under Sections 307, 326, 324, 323, 506, 427, 143, 144, 147, 148 read with Section 149 of the Indian Penal Code, 1860, under Section 3(1)(r), 3(1)(s), 3(1)(u), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, under Section 4 punishable under Section 25 of the Indian Arms Act, 1959 and under Section 135 of the

Maharashtra Police Act, 1951.

2 Heard learned Advocate Mr. G.M. Deshmukh for the appellant, learned APP Mr. A.M. Phule for respondent No.1 and learned Advocate Mr. D.G. Nagode for respondent No.2 – original informant, in both appeals.

3 It has been vehemently submitted on behalf of the appellants that one Prabhakar Appasaheb Kingre is the owner of land Gat No.87 situated at village Sawangi Talav, Tq. Jalna, Dist. Jalna to the extent of 95 R. According to the appellants, all of a sudden the informant, his family members and other 15 people had assembled with weapons like sword in the said land, however, the appellants in defence had told that they should leave the place, but taking disadvantage of the caste false First Information Report has been lodged. In respect of the said incident accused No.3 i.e. appellant in Criminal Appeal No.563 of 2023 lodged First Information Report on 09.04.2023 at about 3.25 p.m. for the offence punishable under Section 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section 4 punishable under Section 25 of the Indian Arms Act vide Crime No.55/2023. In retaliation to that though the alleged incident is stated to have taken place at 11.30 a.m. on 09.04.2023, the impugned First Information Report vide Crime No.57/2023 came to be lodged at 19.06 hours

on 10.04.2023. The belated lodging of the report has not been considered by the learned Special Judge, which appears to be with ill intention. Further, original accused No.1, as per First Information Report, has lodged offence vide Crime No.155/2022 with Badlapur West Police Station, Dist. Thane for the offence punishable under Section 354-D of the Indian Penal Code against Police Officer Mr. Kshirsagar. The said Police Officer Mr. Kshirsagar is attached to Seoli Police Station, Jalna and, therefore, her name has been falsely implicated. There is no bar under Section 18 or 18-A of the Atrocities Act as against original accused No.1, who had sought relief under Section 438 of the Code of Criminal Procedure. As regards another appellant is concerned, the investigation appears to be on the verge of completion and his further physical custody is not required. Therefore, his application also ought to have been allowed. He prayed for allowing both the appeals.

4 Learned APP as well as learned Advocate appearing for the original informant strongly objected the appeals. They have submitted that the original accused No.1 i.e. appellant No.1 in Criminal Appeal No.455 of 2023 had uttered the abuses in the name of caste, in the field, which was within the public view and, therefore, there was bar under Section 18 and 18-A of the Atrocities Act for her bail application under Section 438 of the Code of Criminal Procedure. As regards appellant in Criminal Appeal No.563

of 2023 is concerned, it is specifically stated that he had caused serious injury to the cheek of informant's brother Lahu. He had also caused injury to the left calf of the informant by sword. Learned Advocate appearing for the victim-informant has produced photographs of the video shooting of the incident and also pointed out that the lady with black dress is the original accused No.1. She has assaulted informant's wife Savita with stick and also tried to strangle his wife Savita with the help of her sari. Under such circumstance, a proper investigation is required and, therefore, the decision by the learned Special Judge is correct and legal.

5 At the outset, it is to be noted that the parameters for both the applications i.e. under Section 438 and under Section 439 of the Code of Criminal Procedure are different. Here, it is required to be considered, as to whether the bail application filed by the appellant in Criminal Appeal No.455 of 2023 under Section 438 of the Code of Criminal Procedure was barred under Section 18 or 18-A of the Atrocities Act and as regards Criminal Appeal No.563 of 2023 is concerned, there is no question of any bar, as the bar under Section 18 and 18-A is restricted to applications under Section 438 of the Code of Criminal Procedure and not under Section 439 of the Code of Criminal Procedure. At this stage, we are guided by the contents of the First Information Report and other documents, which have been produced.

6 As regards the First Information Report lodged with Badlapur West Police Station by original accused No.1 against the police person on 11.07.2022 is concerned, it can be certainly said that it has no connection with the present First Information Report. At this stage, we can import that said police person was acting on behalf of the present respondent. That was an independent cause of action, of which the cognizance appears to have been taken by the police.

7 As regards the incident dated 09.04.2023 is concerned, as per First Information Report lodged by original accused No.3 vide Crime No.55/2023 is concerned, it had taken place at about 11.00 a.m. on 09.04.2023 in land Gat No.87. The present respondent No.2, his brother and wife are the accused persons and the said First Information Report was lodged around 15.25 hours. If we peruse First Information Report vide Crime No.57/2023 lodged by present respondent No.2, it can be seen that it is stated to have occurred at 11.30 a.m. on 09.04.2023 in land Gat No.87 and the First Information Report has been lodged at 19.06 hours. Alleged belated First Information Report cannot be the only ground to allow the application. The point of delay is then required to be considered with the other circumstances. The informant in his First Information Report has stated that land Gat No.87 admeasuring 1½ acre was given in 1997 to one Devchand

Ekhande on mortgage by informant's father, however, he says that the possession was with informant and family. According to him, said Devchand Ekhande had sold the said land to one Sandesh Diwakar without giving information to them and for that purpose Regular Civil Suit No.126/2016 was filed by informant in Civil Court, Jalna. The said suit is still pending. It is then stated that in 2022 said Sandesh Diwakar had sold the said property to the neighbouring land holder Prabhakar Kingre, who has erected a tin shed. According to the informant, Prabhakar Kingre is trying to take the possession of the said agricultural land since July, 2022. He was attacked at Chaman, Jalna on 20.01.2023, for which offence has been registered with Kadim Police Station. According to him, Prabhakar Kingre's daughter i.e. present appellant No.1 and son-in-law are Advocate by profession and, therefore, they are threatening him. He says that around 11.00 a.m. of 09.04.2023 he was informed by his wife that some persons with vehicle have come to the field and they are destroying the shed. He, therefore, went to the field and he found the accused persons. He has then stated the role played by each and every person. We are mainly concerned with the role attributed to the present appellant – accused No.1. Then it is said that the appellants abused the informant in the name of caste and accused No.1 asked as to how he is not giving the possession of the land. He was assaulted by another unknown person. When he was being rescued by his wife and

mother, at that time, the present accused No.1 dragged his wife and tried to strangle her with the help of pallu of her sari by saying that she would kill her, but the wife herself rescued. Then, he says that the original accused No.1 had assaulted his wife with stick. As per the First Information Report, the incident has taken place in the field. Even as per the First Information Report lodged by original accused No.3, the said incident had taken place in the field itself. Though the agricultural land can be termed as private property i.e. not a public property, but it can be within the public view and, therefore, when the utterance of the abuses in the name of caste is attributed to accused No.1, then prima facie it attracts ingredients of Section 3(1)(r) and 3(1)(s) of the Atrocities Act. Further, when it is said that she has caused injury, prima facie it attracts Section 3(2)(va) of the Atrocities Act. Now, coming to the fact that whether the said First Information Report is lodged with mala fides is concerned or delay, it is to be noted that it is supported by the documentary evidence. Prima facie it can be seen that the informant and his wife were taken to Civil Hospital, Jalna. Therefore, the said fact cannot be taken in favour of the appellant – original accused No.1. There appears to be bar under Section 18 and 18-A of the Atrocities Act to entertain an application under Section 438 of the Code of Criminal Procedure and, therefore, the rejection of the bail application by the learned Special Judge, under the Atrocities Act, Jalna on 11.05.2023 in Criminal Miscellaneous

Application (Bail) No.486/2023 appears to be justified. No interference is required.

8 Now, turning towards the another appeal it is to be noted that the said accused was arrested and it appears that the investigation was almost completed. It has not been pointed out that anything is remaining to be seized from him. We are not taking into consideration the photographs, as the authenticity of the photographs is yet to be established. If there is a video recording, then it is for the Investigating Officer to collect the same. Now, when nothing is required to be recovered at the instance of the said appellant, then the discretion ought to have been used by the learned trial Judge. The rejection of the said application is on the basis of rejection of his earlier bail application, which was about three days prior to the filing of the second bail application. This approach should not have been taken by the learned Special Judge. But, then he says that there was no change in the circumstance and he could not have been reviewed his own order. No doubt, this ground is proper that he should not have been reviewed his own order and this appears to be the reasonable ground that within a period of three days only there was no change in the circumstance. No doubt, the earlier rejection of the bail application is not challenged; yet, we are of the opinion that when the investigation as against the appellant is over, then, he need not

be kept behind the bars. No doubt, it appears that the appellant has made allegations against certain Police Officers, but not in particular, that cannot be a ground to reject his bail application. With heavy conditions the bail application can be allowed and the discretion can be used in such judicious manner. Hence, we proceed to pass following order.

ORDER

1 Criminal Appeal No.455 of 2023 stands dismissed.

2 We clarify that the interim protection granted earlier to appellant No.1 **Jayshree Prabhakar Kingre** now stands vacated.

3 Criminal Appeal No.563 of 2023 stands allowed.

4 The order passed by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Jalna, Dist. Jalna in Criminal Miscellaneous Application (Bail) No.681/2023 dated 26.06.2023, is hereby set aside. Said application stands allowed.

5 The appellant **Rajendra Prabhakar Kingre**, who has been arrested in connection with Crime No.57/2023 dated 10.04.2023 registered with Seoli Police Station, Dist. Jalna, for the offence punishable under Sections 307, 326, 324, 323, 506, 427, 143, 144, 147, 148 read with Section 149 of the Indian Penal Code, 1860, under Section 3(1)(r), 3(1)(s), 3(1)(u), 3(2)(va) of

the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, under Section 4 punishable under Section 25 of the Indian Arms Act, 1959 and under Section 135 of the Maharashtra Police Act, 1951, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

6 Appellant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence, in any manner.

7 Appellant shall cooperate with the investigation and shall attend office of the Sub Divisional Police Officer, Partur, Tq. Partur, Dist. Jalna, on every Monday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

8 He shall not enter the jurisdiction of village Savangi Bardi, Tq. & Dist. Jalna till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the appellant should give complete address of his proposed residence with his mobile number to the Seoli Police Station as well as to the trial Court.

9 Bail before Trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)