

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 CRIMINAL APPEAL NO. 467 OF 2023

ABHIJEET S/O AJIT GHUTE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Appellants : Mr. Suhas B. Ghute
APP for Respondent-State : Mr. A. M. Phule
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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 08 JUNE 2023

PER COURT :-

1. Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short, "Atrocities Act"] to challenge the order passed on 17.05.2023 by learned Special Judge under the Atrocities Act, Osmanabad in Anticipatory Bail Application No.242 of 2023. The present appellants have been arrayed as accused nos. 5 and 6 in the FIR lodged by present respondent no.2 with Dhoki Police Station, District Osmanabad wherein C.R. No.173 of 2023 dated 02.05.2023 for the offence punishable under Sections 326, 324, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code [IPC] and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Atrocities Act.

2. Heard Mr. Suhas B. Ghute, learned Advocate for the appellants and Mr. A. M. Phule, learned APP for the State.

3. Respondent no.2 in his FIR dated 02.05.2023 makes allegations about the incident that it took place at about 6.00 p.m. on 28.04.2023.

4. Learned Advocate appearing for the appellants has taken us through the FIR and submits that as regards the present appellants are concerned, the allegations are that the appellant no.1-Abhijit had caused the informant to fall on the ground and appellant no.2-Sachin had assaulted him by kicks and fists. The allegations invoking offence under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Atrocities Act are not made out against the appellants. Under such circumstance, custody of the appellants is not required. He also points out the communication made by the villagers to the District Superintendent of Police, Osmanabad on 11.05.2023 informing that no such incident had taken place when Dr. Babasaheb Ambedkar Jayanti was celebrated in the village. The said communication is signed by many villagers and therefore the FIR is the outcome of *malafides*. The appellant deserves to be protected.

5. At the threshold, i.e. even before the notice is issued to respondent no.2, unless it is pointed out by the appellants that there application was maintainable, that means there is no bar under Section 18 and 18-A of the Atrocities Act, the appeal will not proceed and for that purpose, the apparent scrutiny is required. The learned Special Judge has considered that the informant had sustained grievous injuries as well as simple injuries and was shifted in Civil Hospital, Solapur in unconscious state. The injuries have been considered and therefore it is stated that there was bar under Section 18 and 18-A of the Atrocities Act when the active involvement of the appellants could be seen from the record.

6. At this stage, what would be considered is the chronology that has been given in the FIR. The informant says that he was putting a blue flags on the road. At that time he was obstructed by one Jalinder Ghute, who is from upper caste, and abused the informant in the name of caste. He then states that co-accused Ratan came with iron rod and inflicted a blow on his head. Thereafter, Ratan's son assaulted him by rod on his legs, hands, back and chest. Thereafter, accused Dada Ghute, Sachin Ghute, Abhijit Ghute, Annasaheb Dete, Pramod Kalyan and others came who assaulted him. In the subsequent part of

the FIR, he gives specific role of appellant no.1-Abhijit that he had caused him to fall down and then appellant no.2-Sachin had assaulted him by kicks and fists. Therefore, as per the *prima facie* reading of the FIR, it is apparent that the appellants were having knowledge about the caste of the informant. Still they have assaulted him. Under such circumstance, the action would fall under Section 3(2)(va) of the Atrocities Act creating a bar under Sections 18 and 18-A of the Atrocities Act. We do not find any illegality in the order passed by the learned Special Judge. The appeal deserves to be dismissed at the threshold and accordingly it is dismissed.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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