

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.471 OF 2023

1. Vijaysing s/o Fulsing Jarwal
 2. Harsing s/o Fulsing Jarwal
 3. Balchand s/o Kacharu Gusinge
 4. Navnathrao s/o Kisanrao Mule
- .. Appellants**

Versus

1. The State of Maharashtra
Through Shillegaon Police Station,
Aurangabad.
 2. Rukhmanbai w/o Suresh Aswar
- .. Respondents**

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Mr. Chaitanya C. Deshpande, Advocate for appellant No.1.

Mrs. V. S. Choudhari, APP for respondent No.1 – State.

Mr. S. S. Nade, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 30th June, 2023.

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

. Admit.

2. Present appeal has been filed by the appellants under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) to

challenge the order of rejection of their bail application under Section 438 of the Code of Criminal Procedure i.e. Bail Application No.158 of 2023 by learned Special Judge/Additional Sessions Judge on 19.05.2023. The present appellants stood prosecuted in Crime No.129 of 2023 registered at Shillegaon Police Station, Dist. Aurangabad for the offences punishable under Sections 326, 324, 504, 506, 143, 147, 148, 149 of Indian Penal Code and under Section 3(1)(r), 3(2)(va) of the Atrocities Act. It will not be out of place to mention here that when the matter was on board on 19.06.2023, after the disinclination is shown to grant any relief in favour of appellant Nos.1 to 3, learned Advocate for the appellants, on instructions, seeks withdrawal of the appeal as against them. Under such circumstance, the appeal stands disposed of as withdrawn as against appellant Nos.1 to 3. The appeal to proceed for the reliefs claimed by appellant No.4 only.

3. Heard Mr. Chaitanya C. Deshpande for the appellants, learned APP Mrs. V. S. Choudhari for respondent No.1 – State and learned Advocate Mr. S. S. Nade for respondent No.2.

4. Perusal of the FIR lodged by present respondent No.2 would show that she is residing with her two sons and two daughters. They are the members of scheduled caste. She contends that at about 6.30 p.m. on 24.04.2023, when she along with her children was present in her house in

agricultural land bearing Gut No.49 in village Pachpirwadi, Tq. Gangapur, Dist. Aurangabad, in all six accused persons along with three to four unknown persons came in their field and started abusing in the name of caste. Accused Viju Jarwal told her that the field belongs to him. When she, her son, daughter and grandson were pursuing the accused, accused Harsing assaulted her son Rohidas with pipe. Accused Balchand and Harsing both assaulted her daughter Jayshri by sticks. Then accused Viju assaulted her brother with stick. It is then stated that other persons assaulted them by sticks and wooden logs. Thereafter, all the accused persons abused in the name of caste and asked them to leave the place, otherwise they would be killed. All of them went to police station and then they were referred to medical examination. After getting treatment, informant lodged the FIR.

5. We have perused the police papers. It appears that the substantial part of the investigation is over. Even the statements have been recorded under Section 164 of the Code of Criminal Procedure.

6. We are now concerned with the role attributed to appellant No.4 Navnathrao Kisanrao Mule. In her statement under Section 164 of the Code of Criminal Procedure, the informant has not stated the name of appellant No.4, but then she has referred him as nephew of Aaba Kisan

Mule. This appears to be the connection, which the prosecution intends to bring it on record. However, it is not yet established that the appellant No.4 is the nephew of Aaba Kisan Mule. Therefore, if we consider the statement of informant under Section 164 of the Code of Criminal Procedure, name of appellant No.4 not specifically appearing. Statements of witnesses Jayshri Shelar, Suresh Aswar, Prem Kishor Sarode, Rohidas Aswar, Walmik Aswar etc. would show that appellant No.4 had assaulted informant by stick, which caused injury to her face and head. This fact is not disclosed in the FIR. The supplementary statement of the informant has not been recorded and as aforesaid even in her statement under Section 164 of the Code of Criminal Procedure, she has not named appellant No.4. Therefore, taking into consideration this aspect, *prima facie* direct case is not made against appellant No.4. Secondly, as regards the abuses in the name of caste is concerned, it is stated that he along with other accused abused the informant and others in chorus. Reliance can be placed on the decision in ***Shashikant Ramhari Tambe & Others Vs. State of Maharashtra [2008 All MR (Cri.) 2132]***, wherein this Court has observed that abuses cannot be in chorus. Therefore, we are of the opinion that no *prima facie* offence attracting Sections under the Atrocities Act have been made out. There was no bar for considering the anticipatory bail as against appellant No.4 as contemplated under Section 18 or 18-A of the Atrocities Act. The interim relief granted earlier by this Court deserves to be confirmed.

Hence, the following order :-

ORDER

I) The Criminal Appeal stands allowed in respect of appellant No.4 only.

II) The order passed below Exhibit-01 in Criminal Bail Application Nos.158 of 2023 dated 19.05.2023 by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Vaijapur stands set aside in respect of appellant No.4. The said application stands allowed in respect of appellant No.4.

III) The interim protection granted by this Court earlier to appellant No.4 – Navnathrao Kisanrao Mule vide order dated 19.06.2023 is hereby confirmed and made absolute. In other words, in the event of arrest of the appellant No.4 – **Navnathrao s/o Kisanrao Mule** in connection with Crime No.129 of 2023 registered with Shillegaon Police Station, District Aurangabad for the offences punishable under Sections 326, 324, 504, 506, 143, 147, 148, 149 of Indian Penal Code and under Sections 3(1)(r) and 3(2)(va) 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) Appellant No.4 should remain present before the Investigating Officer on every Friday between 10.00 a.m. to 12.00 noon till filing of charge-sheet.

V) He shall not tamper with the evidence of the prosecution in any manner.

VI) He shall not indulge in any criminal activity.

VII) He shall cooperate with the investigation.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm