

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.481 OF 2023

1. Parmeshwar s/o Tanaji Kadam
Age: 48 years, Occu.: Agriculture,
2. Vishwanath s/o Panditrao Kadam
Age: 45 years, Occu.: Agriculture,
3. Gajanan s/o Pandurang Kadam,
Age: 42 years, Occu.: Agriculture,
4. Bhagwat s/o Dnyaneshwar Kadam
Age: 22 years, Occu.: Agriculture,
5. Amol s/o Baburao Kadam
Age: 35 years, Occu.: Agriculture,
6. Sandeep s/o Keshavrao Kadam
Age: 40 years, Occu.: Agriculture,
7. Santosh s/o Marotrao Kadam
Age: 30 years, Occu.: Agriculture,
8. Raju s/o Shriram Kadam
Age: 35 years, Occu.: Agriculture,
9. Chandu @ Pratap s/o Bhimrao Kadam
Age: 25 years, Occu.: Agriculture,
10. Deepak s/o Vithalrao Kadam
Age: 45 years, Occu.: Agriculture,
11. Gajanan s/o Ramkishan Kadam
Age: 35 years, Occu.: Agriculture,
12. Yogesh s/o Pandurang Kadam
Age: 25 years, Occu.: Agriculture,

All R/o Walki (Kd.),
Tq. Hadgaon, Dist. Nanded

.. Appellants

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station, Hadgaon,
Tq. Hadgaon, Dist. Nanded.
2. Digambar s/o Vithal Gaikwad,
Age: 30 years, Occu.: Business,
R/o. Walki (Kd.), Tq. Hadgaon,
Dist. Nanded.

.. Respondents

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Mr. Arjun Kanade h/f Mr. R. B. Narwade Patil, Advocate for appellants.
Mr. A. M. Phule, APP for respondent No.1 – State.
Ms. Ashwini A. Lomte, Advocate for respondent No.2 (Appointed).

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

DATE : 6th July, 2023

ORDER :-

. Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) by the original accused persons to challenge the order below Exhibit-1 i.e. the application under Section 438 of the Code of Criminal Procedure filed by them in Miscellaneous Criminal (Bail) Application No.328 of 2023 before learned Special Judge, under the Atrocities Act/Additional Sessions Judge-1, Nanded on 26.05.2023. The appellants have been arrayed as accused in Crime No.111 of 2023 registered with Hadgaon Police Station, Dist.

Nanded for the offences punishable under Sections 392, 326, 324, 336, 143, 147, 148, 149 of Indian Penal Code and under Sections 3(1)(r)(s), 3(2)(va) of the Atrocities Act. The said FIR came to be lodged on the basis of report lodged by respondent No.2.

2. Heard learned Advocate Mr. Arun Kanade holding for learned Advocate Mr. R. B. Narwade Patil for the appellants, learned APP Mr. A. M. Phule for respondent No.1 – State and learned Advocate Ms. Ashwini A. Lomte, who is appointed to represent the cause of respondent No.2.

3. Learned Advocate appearing for the appellants submitted that perusal of the FIR would show that the incident alleged to have taken place around 10.00 p.m. on 15.05.2023 and the FIR has been lodged at 5.45 a.m. on 16.05.2023. It is in retaliation to the FIR lodged against informant and others. One Baburao Parasram Kadam lodged FIR against informant and eight others vide Crime No.110 of 2023 with the same police station, which came to be registered around 4.27 a.m. on 16.05.2023 for the offences punishable under Sections 395, 326, 324, 452 of Indian Penal Code. Further, the impugned FIR is concocted and the alleged abuses are stated to have been given in chorus. Nothing is required to be recovered from them. There was no question of bar under Section 18 or 18-A of the Atrocities Act. The learned Special Judge ought to have exercised the discretion and granted anticipatory bail.

4. Per contra, the learned APP as well as learned Advocate, who is appointed to represent the cause of respondent No.2, strongly opposed the appeal and submitted that specific abuses have been stated which are not only filthy, but in the name of caste. Those abuses were given when the informant and other witnesses were sleeping on road near the statue of Annabhau Sathe and then even assaulted by hand and pelted stones towards the statue, thereby the sentiments have been harmed. The physical custody of the appellants is required as golden beads from the Mangalsutra of the mother of informant fell down in the scuffle as she had come to rescue the informant and thereby the mischief has been committed. There is clear bar under Section 18 and 18-A of the Atrocities Act.

5. Here, it has been shown that the FIR lodged by Baburao Parasram Kadam vide Crime No.110 of 2023 against the informant and others is prior in time and, therefore, there is substance in the say of the appellants that the present FIR is in retaliation. The second aspect to be noted is that alleged abuses are stated to have been given in chorus, which itself is unbelievable. Same abuses cannot be uttered in chorus by so many persons. The contents of the FIR would also show that some of the accused were standing near the flour mill and were talking with each other. Informant then says that said conversation was addressing informant and others in

the name of caste. Thereupon the informant and others went near the accused to ask them as to why they were allegedly abusing. Then, it is said that again the accused persons abused them in the name of caste, which is again stated to be in chorus. It is then stated that about 16 named persons with 15-16 unknown persons came there and started pelting stones towards the statute. In the said pelting of stones, informant's brother Vilas had sustained injury to his head, Pandurang Gaikwad sustained injury to hand and then it is said that mother of the informant came there, who was also assaulted and there was mischief in respect of her Mangalsutra. It is then also stated that her blouse was torn. As aforesaid, even at this *prima facie* stage, it can be said that the FIR appears to be the outcome of *mala fides* and as in retaliation. Therefore, there is no question of bar under Section 18 or 18-A of the Atrocities Act in view of ratio laid down by the Hon'ble Supreme Court in ***Prathvi Raj Chauhan Vs. Union of India and others, [(2020) 4 SCC 727]***. The learned Special Judge ought to have exercised the said discretion by assessing as to whether the offence under the Atrocities Act is *prima facie* made out or not. When it comes to *mala fides*, the scrutiny cannot be restricted to the wordings in the impugned FIR. The Special Courts are not considering this point and mechanically rejecting the applications. It is giving rise to the appeals under Section 14-A(2) of the Atrocities Act. Such action will have to be deprecated. As the learned Special Judge ought to have utilized the discretion and he has

not utilized the same, the appeal is bound to succeed. The appellants were granted interim protection. The investigating officer has not reported that they have committed any breach of conditions and, therefore, the appeal deserves to be allowed. Hence, the following order :-

ORDER

- I) The Criminal Appeal stands allowed.

- II) The order passed below Exhibit-01 in Miscellaneous Criminal (Bail) Application No.328 of 2023 dated 26.05.2023 by learned Special Judge, under the Atrocities Act/Additional Sessions Judge-1, Nanded stands set aside. The said application stands allowed.

- III) The interim protection granted by this Court earlier to appellants vide order dated 16.06.2023 is hereby confirmed and made absolute. In other words, in the event of arrest of the appellants viz., (1) Parmeshwar Tanaji Kadam, (2) Vishwanath Panditrao Kadam, (3) Gajanan Pandurang Kadam, (4) Bhagwat Dnyaneshwar Kadam, (5) Amol Baburao Kadam, (6) Sandeep Keshavrao Kadam, (7) Santosh Marotrao Kadam, (8) Raju Shriram Kadam, (9) Chandu @ Pratap Bhimrao Kadam, (10) Deepak Vithalrao Kadam, (11) Gajanan Ramkishan Kadam and (12) Yogesh Pandurang Kadam in connection with Crime No.111 of 2023

registered with Hadgaon Police Station, District Nanded for the offences punishable under Sections 392, 326, 324, 336, 143, 147, 148, 149 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Atrocities Act, they be released on P. R. and S. B. of Rs.15,000/- each, if not already released.

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

V) They should present before the Investigating Officer on every Monday between 10.00 a.m. to 01.00 p.m. till filing of charge-sheet.

VI) They 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