

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

CRIMINAL APPEAL NO.557 OF 2023

1. Balaji Baburao Gawali
2. Dattatray @ Dattu Bhanudas Gawali
3. Jayashree @ Lalabai Dattu Gawali ... APPELLANTS

VERSUS

1. The State of Maharashtra
Through Yermala Police Station
2. Vinayak Gulab Shinde ... RESPONDENTS

Mr. M. V. Jawale, Advocate for the appellants
Mr. S. P. Sonpawale, APP for the respondent/State
Mr. R. B. Wankhede, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 11th SEPTEMBER, 2023

P.C. :-

1. The appellants are aggrieved by the order of rejection of Anticipatory Bail Application and hence preferred this appeal under section 14A of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act').

2. The first informant filed an application before the Special Court under Section 156(3) of Code of Criminal Procedure (for short 'the Code') informing about occurrence of two incidents i.e. incident dated 21/05/2018 and 22/05/2018. It is his contention that on 21/05/2018

when his wife was alone in the house the accused No.3 abused her and outrage her modesty. There is allegation that she was abused over her caste. In respect of incident dated 22/05/2018 it is alleged that at around 10.30 pm all accused came together with sticks and axe in their hand. They abused the informant and his wife over their caste. It is alleged that accused Nos. 2 and 4 had beaten his wife with fist and kick blows whereas he himself was assaulted by accused Nos. 1,2,3 and 5 with the handle of axe. In the said assault he sustained injuries to his back. It is categorically stated therein that he went to the concerned police station, however the report was not lodged and only NC No. 236/2018 came to be recorded. It is his further contention that he went to witness No.2 who had examined him and gave medication. Thereafter on 26/05/2018 he went to Government Hospital Yedshi wherein he was referred to the general hospital Osmanabad. It is his contention that the offence has been committed under the Act.

3. Learned counsel for the appellants submitted that the alleged incident has occurred on 21/05/2018 and 22/05/2018 whereas the report has been lodged whereas the application under Section 156(3) of the Code has been filed on 30/05/2018 and order came to be passed on 11/04/2023. It is his further submission that in the complaint made by the informant there are no specific allegations against the appellant of

committing any acts. It is the contention that the allegations are omnibus in nature.

4. Learned APP opposed the appeal by contending that the statements of witnesses are recorded show the involvement of the appellants in the crime. He, however, states that he does not have a medical certificate to place the same on record. Learned counsel for the informant submitted that he has already placed injury certificate on record and hence the certificate is not required to be placed by the prosecution to this Court. It is his contention that on the very same day of the incident i.e. on 22/06/2018 he had been to the concerned police station wherein police has refused to lodge the report. Thus, according to him there is no delay caused in lodging report. It is his further contention that there are specific allegations against the appellants of they being involved in the incident of assault and abusing the informant and his wife over their caste constituting offences punishable under Atrocities Act. To support his submission he placed reliance on Section 8(b) of the Act to contend that no specific allegations are required against the accused and it shall be presumed that the offence has been committed in furtherance of common intention when the offence in question is sequel of any existing dispute regarding land or any other matter. With the submission that since an incident occurred on 21/05/2018, the incident of

22/05/2018 is in sequel thereof presumption under Section 8(b) of the Act would apply to the present case. He states that there is bar created by Section 18 of the Act for grant of anticipatory bail.

5. There cannot be any dispute made about the position of law as Section 18 of the Act bars the entertainment of any anticipatory bail application similarly there is presumption as to the offences has contemplated by Section 8 of the said Act. It however needless to say that if prima facie the material on record indicates that this could be a case of false implication, the Court is not expected to stay its hand. As far as the present case is concerned, admittedly the complaint in question has been lodged by the informant. Since he directly made to complaint to the Special Court, it is not open for the informant to say that any part of the complaint has not been recorded as per his say. Perusal of the complaint made by the informant to the Special Court does not specify any role against the appellants/accused in particular. Even the allegation in respect of insult or abuses over the caste is omnibus in nature. It is difficult to accept that these appellants/accused in one go abused him in the manner as alleged in the complaint by him. As far as the assault is concerned, there are no specific allegations against any particular accused. Contrary thereto the wife of informant gives altogether different version not only in respect of the incident of

22/05/2018 but also in respect of the incident of 22/05/2018.

6. This Court is fully conscious of the fact that the first information report will not be encyclopedia. However, when the report has been lodged after the period of 5 days of the occurrence of the incident, it is not open for the informant to say that inadvertently any particulars of the crime remained to be stated. In this case statement of the wife shows that her statement makes the information given by the first informant not trustworthy. One more aspect needs to be considered in this case is that the informant had filed an application before the Special Court for issuance of directions for his medical examination. Pursuant to the said direction he went to the government hospital, Osmanabad wherein he was examined and the injury certificate shows that there are old contusion on the back of the injured. As per the case of the complainant himself he had been to the hospital at Yedshi on 26/05/2018 and thereafter again on the same the same day to the general hospital, Osmanabad, there is material on record to indicate that as to the result of the examination done of the informant on that day. The record indicates that on 26/05/2018 he was treated at the said hospital. However, the injury certificate is not placed on record. Even the informant/complainant does not claim any injury certificate being issued by the concerned hospital on that day. All these facts, certainly create

doubt about the genuineness of the complaint and in such circumstances the bar of Section 18 of the Act would not apply to the present case. In the result, present appeal is allowed in terms of interim order dated 7th July, 2023.

(R. M. JOSHI, J.)

ssp