

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

CRIMINAL APPEAL NO.636 OF 2023

- 1 Sayyad Nihal Ahemad Yahiya,
Age 21 yrs., Occ. Education,
- 2 Syed Ansar Syed Khizar Ali,
Age 31 yrs., Occ. Labour,
- 3 Sayyad Sameer Sayyad Kalim Pasha,
Age 24 yrs., Occ. Education,

All are r/o Chand Tara Chowk, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

... **Appellants**

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station Officer,
Police Station, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
- 2 Vaijanath Prabhu Ufade,
Age 36 yrs., Occ. Business,
R/o Gautam Nagar, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

... **Respondents**

...

Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Jethliya, Advocate for
appellants

Mr. S.J. Salgare, APP for respondent No.1

Mr. K.P. Rathod, Advocate for respondent No.2

...

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

RESERVED ON : 24th AUGUST, 2023

PRONOUNCED ON : 31st AUGUST, 2023

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

1 Admit.

2 Present appeal has been filed 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”) by original accused Nos.3 to 5 as per First Information Report, to challenge the rejection of their application under Section 438 of the Code of Criminal Procedure by learned Special Judge, under Atrocities Act/Additional Sessions Judge, Gangakhed, Dist. Parbhani on 11.07.2023 in Criminal Miscellaneous Application (Bail) No.115/2023. The said First Information Report has been lodged at the behest of present respondent No.2 vide Crime No.270/2023 with Gangakhed Police Station, Dist. Parbhani, for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 504, 506 read with Section 149 of the Indian Penal Code, 1860, under Section 3(1)(r), 3(1)(s), 3(2)(v) of the Atrocities Act, under Section 4 punishable under Section 25 of the Indian

Arms Act, 1959 and under Section 135 of the Maharashtra Police Act, 1951.

3 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Jethliya for the appellants, learned APP Mr. S.J. Salgare for respondent No.1 and learned Advocate Mr. K.P. Rathod for respondent No.2.

4 It has been vehemently submitted on behalf of the appellants that the learned trial Judge has failed to consider the contents of the First Information Report in proper sense. It has been wrongly held that there is bar under Section 18 and 18-A of the Atrocities Act for the application under Section 438 of the Code of Criminal Procedure filed by the present appellants. The alleged abuses in the name of caste were given by co-accused, who were not before the Court. Contents of the First Information Report would show that the main accused called the present appellants by giving a phone call and the present appellants brought sword, rod and sticks. Accused Saddam had then assaulted the informant by sword and giving abuses in the name of caste gave threat to kill. The blow of the sword was received by him on head and then the present appellants alleged to have assaulted the friend of the informant by stick and rod. The name of the said friend has not been given and, therefore, Section 3(2)(v) of the Atrocities Act

cannot be made applicable to the present appellants. There was no bar for the application filed by the present appellants for getting anticipatory bail and, therefore, the present appeal deserves to be allowed.

5 Per contra, the learned APP as well as learned Advocate for respondent No.2 – original informant strongly objected the appeal and submitted that there is ample evidence against the present appellants to show their involvement in the incident. If these appellants would not have supplied the sword, informant would not have received those injuries. The present appellants were called by original accused No.1 and then they came along with the weapons. Learned APP on the basis of police papers submitted that the supplementary statement of the informant has been recorded on 27.06.2023, wherein he has disclosed that even the present appellants had abused him in the name of caste and they had also assaulted the informant. At the time of supplementary statement also the informant was admitted in the hospital, but he has then given the clarification. Learned APP further submitted that the statements of the witnesses would also show that these appellants had assaulted witness Sulakshan Waghmare, who is also the member of scheduled caste. There are eye witnesses to the incident also. The appellants and informant were knowing each other and, therefore, there is prima facie evidence that the caste of the informant was within the

knowledge of the present appellants. Learned Advocate representing respondent No.2 has further submitted that the said incident has created apprehension in the mind of informant and he felt that there is threat to his life. He, therefore, prayed for the rejection of the appeal.

6 The first and the foremost fact to be noted is that as regards the appellant No.1 Sayyad Nihal is concerned, his name is not appearing in the First Information Report and even in the entire statements of the witnesses. One Naser has been stated to be involved i.e. Sayyad Naser. The police papers also show that his full name is 'Naser s/o Shakil Sayyad', who appears to be a different person than the appellant No.1. This fact has not been considered by the learned Special Judge.

7 Even if we consider that the name of appellant No.1 has been wrongly stated, for which at a later point of time the prosecution may come up with some explanation and appellant No.1 is the same person to whom the witnesses intended to indicate. We are required to consider what are the allegations against them. This scrutiny is to the extent to see whether prima facie case has been made out under the Atrocities Act against them. Perusal of the First Information Report would show that informant Vaijanath was playing cricket with one Iftekhhar, Rihan and Sulakshan on Idgah maidan,

Gangakhed. At that time accused Nos.1 and 2 went there on motorcycle and started abusing the informant in the name of caste. He then asked, as to why they are abusing in the name of caste to him, then they told that he should wait and then would show him. Thereafter, accused Sayyad Saddam gave phone call to his friends and then the present appellants have come alleged to be with weapons. The point on which the dispute started was not clarified in First Information Report. Even it can be said at this stage that all of a sudden there cannot be a quarrel and abuses in the name of caste. In the supplementary statement, which has been recorded three days thereafter, the informant says that all the accused came together and they were having anger as a result of the dispute that had taken place between him and Rihan, who is nephew of Iftekhar. Therefore, if the First Information Report and supplementary statement read together, when that Iftekhar as well as Rihan were already playing with the informant, then why the third person would get annoyed. But, then, after three days the informant assigns some role as well as says that the present appellants had also abused him in the name of caste and assaulted which was absent in First Information Report. If we consider the statement of Sulakshan, who himself is also member of scheduled caste, he also says that when he went to Idgah maidan for playing cricket, at that time, informant, Iftekhar, Rihan and accused Nos.1 and 2 were already playing cricket. So, now, it appears that even accused Nos.1

and 2 were playing cricket with the informant and then the incident took place. Witness Naimoddin Shaikh also says that these five persons as stated by Sulakshan were playing cricket and the same is the statement with witness Habib Husen Habib Sale Chaus. Now, there are further supplementary statements of informant, Sulakshan and Habib Husen recorded on 10.07.2023 stating that from the friends they got the knowledge that real name of Naser is in fact Nihal. We could get in the police papers the Medico Legal Certificate of the informant issued on 21.07.2023 in respect of his examination at Sub District Hospital, Gangakhed at 7.00 p.m. on 24.06.2023 that he had received simple injury on right fronto parietal region 5 cm x 4 cm x skull deep in size and the type of weapon i.e. alleged to be used is blunt object. But, still it appears that he was referred to the higher centre for CT brain. Now, for that simple injury if he was admitted for at least three days, then it will be for the prosecution to prove as to what was the nature of the injury. Witness Iftekhar has rather received five injuries including the blunt trauma over right forearm to which there was swelling. Four out of them are the simple injuries. Same is the case with Rihan, but had received three injuries. There was swelling at the distal radio-ulnar joint of left forearm. All of them were referred to the higher centre. As on today the investigation is not complete and, therefore, it appears that the final certificate is not yet taken.

8 From the entire scrutiny what could be gathered is that there appears to be quarrel while playing cricket, but the possibility of giving colour of the caste to the said quarrel cannot be ruled out and, therefore, we are of the opinion that the facts do not attract offence under the Atrocities Act, when it comes to the allegations against the present appellants. Learned Special Judge ought to have considered all these aspects. Prime consideration should be to protect the life and liberty of the persons and when a different colour has been tried to be given, then the bail application should not be rejected. None of the witnesses have stated that appellants were knowing the caste of the informant as well as Sulakshan. The statement of witness Sulakshan does not spell out that he felt that he being the member of scheduled caste was targetted by the appellants and, therefore, the learned Special Judge ought to have allowed the bail application. This Court has granted the interim relief to the present appellants by order dated 21.07.2023. It deserves to be confirmed. Accordingly, it is confirmed. Hence, following order.

ORDER

1 The appeal is hereby allowed.

2 The order passed by learned Special Judge, under Atrocities Act/

Additional Sessions Judge, Gangakhed, Dist. Parbhani in Criminal Miscellaneous Application (Bail) No.115/2023 dated 11.07.2023, is hereby set aside. Said application stands allowed.

3 The interim protection, granted by this Court earlier to appellants vide order dated 21.07.2023, is hereby confirmed and made absolute. In other words, if the appellants are not formally arrested, in the event of arrest of the appellants viz. **1) Sayyad Nihal Ahemad Yahiya, 2) Syed Ansar Syed Khizar Ali and 3) Sayyad Sameer Sayyad Kalim Pasha**, in connection with Crime No.270/2023 dated 25.06.2023 registered with Gangakhed Police Station, Dist. Parbhani, for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 504, 506 read with Section 149 of the Indian Penal Code, 1860, under Section 3(1)(r), 3(1)(s), 3(2)(v) of the Atrocities Act, under Section 4 punishable under Section 25 of the Indian Arms Act, 1959 and under Section 135 of the Maharashtra Police Act, 1951, they be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) each with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

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

5 Appellants shall attend Police Station, Gangakhed on every Monday and Thursday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet and cooperate with the investigation.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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