

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

CRIMINAL APPEAL NO.803 OF 2022

- 1] Yuvraj Anurath Thombre
Age: 42 years, Occu: Agriculture,
R/o. Dindrud, Tq.Majalgaon,
Dist.Beed.
- 2] Munjabhau @ Munna Tukaram Thombre
Age: 26 years, Occu.: Agriculture,
R/o. Dindrud, Tq. Majalgaon,
Dist.Beed.
- 3] Nagesh Pandurang Thombre
Age: 30 years, Occu.: Business,
R/o. Dindrud, Tq.Majalgaon,
Dist.Beed.
- 4] Mahesh Sandipan Thombre
Age: 24 years, Occu.: Agriculture,
R/o. Dindrud, Tq.Majalgaon,
Dist.Beed.
- 5] Yogesh Suresh Thombre
Age; 20 years, Occu.: Agriculture,
R/o. Dindrud, Tq.Majalgaon,
Dist.Beed.

..Appellants
(Original Accused)

VERSUS

- 1] The State of Maharashtra
Through Police Station Dindrud,
Dist.Beed.
- 2] Vaibhav Madhukar Deshmane
Age: 25 years, Occu.: Education,
R/o.Dindrud, Tq.Majalgaon,
Dist.Beed.

..Respondents

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Advocate for Appellants : Mr.Sudarshan J. Salunke
APP for Respondent No.1-State : Ms.V.S.Choudhary
Advocate for Respondent No.2 : Ms.Sunita G. Sonawane

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

DATE : 16th January, 2023

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

. Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") challenging the rejection of the Bail Application Nos.346 of 2022 and 350 of 2022 filed by the appellants under Section 438 of Code of Criminal Procedure (Cr.PC.), by learned Special Judge under the Atrocities Act Majalgaon, District Beed on 12-10-2022.

2. Admit.

3. Respondent No.2 is the informant, who had lodged Criminal Miscellaneous Application No.19 of 2021 for sending the complaint under Section 156(3) of Cr.PC. for investigation before the learned Special Judge under the Atrocities Act, Majalgaon, District Beed. It came to be allowed on 19-09-2022 and the Incharge of Police Station Dindrud, Majalgaon, District Beed, was directed to investigate the matter and thereupon FIR vide Crime No.176 of 2022 came to be registered with the said Police Station for the offence punishable under Sections 141, 147, 148, 149, 307,

324, 323, 506 of Indian Penal Code (IPC) and under Sections 3(1)(r) (s), 3(2)(v) and 3(2)(va) of the Atrocities Act.

4. Heard Mr.S.J.Salunke, learned Advocate for the appellants, Ms.V.S.Choudhary, learned APP for respondent No.1 and Ms.Sunita G.Sonawane, learned Advocate for respondent No.2.

5. It has been vehemently submitted on behalf of the appellants that FIR is nothing but the outcome of political rivalry. There is huge delay in lodging the report. The incident had allegedly taken place on 31-07-2021 and FIR has been lodged on 22-09-2022. Police Head Constable - Ganesh Rathod attached to Dindrud Police Station had lodged Crime No.162 of 2021 on the same day for the offence punishable under Sections 353, 332, 143, 147, 148, 149, 188, 269, 270 of the Indian Penal Code (IPC) and Sections 51(b) of Disaster Management Act, 2005 and other Sections against 22 persons, which included the applicants as well as the informant. It is then stated that when the Police got information about dispute between two groups of people, the Police tried to intervene but the Police persons were also assaulted and abused by accused persons and they have received injuries. In connection with the said offence, the informant was arrested and was produced before the Magistrate on 01-08-2021. The complaint filed by him discloses that he was released on bail in that matter on 20-08-2021. In spite of these facts coming before the Court, it

has been considered by learned Special Judge that there was delay in lodging the FIR and another fact, which was not considered at all, is that the informant had already lodged another offence in the past under the Atrocities Act itself against accused No.1. It shows that the informant is misusing the benefit under the Atrocities Act and therefore, by relying upon the decision in *Pravin s/o. Shrimant Bhutekar vs. State of Maharashtra and Another* reported in *2010 ALL MR (Cri) 1223*, it has been submitted on behalf of the appellants that in cases of political touch to the complaint, even though there is bar under Section 18 of Atrocities Act, exception will have to be carved out and such cases should be considered as fit to exercise discretion under Section 438 of Cr.PC. It has been submitted that the learned Special Judge, while rejecting the applications, has not considered the decision of the Hon'ble Apex Court in the case of *Prathvi Raj Chauhan vs. Union of India* reported in *(2020) 4 SCC 727* in its proper perspective. So also other decisions, which were produced before the concerned Judge, were not considered and applications were rejected holding that they are barred under Sections 18 and 18A of the Atrocities Act. The said orders deserve to be set aside.

6. Per contra learned APP for respondent No.1 as well as learned Advocate appearing for respondent No.2 strongly opposed the appeal and supported the reasons given by the learned Special Judge while rejecting the application. Though both have canvassed that the applications before

the learned Special Judge by present appellants were barred under Section 18 of the Atrocities Act as *prima facie* offences under Atrocities Act were made out. It can be seen from the order passed by the learned Special Judge while granting Criminal Miscellaneous Application No.19 of 2021, which directed the Police to make investigation under Section 156(3) of the Cr.P.C., that the complaint was disclosing the cognizable offence which indicates *prima facie* case and therefore, even if taking into consideration decision in ***Prathvi Raj Chavan*** (supra), when the *prima facie* case is made out, the application would be barred under Sections 18 and 18A of the Atrocities Act. It has been further submitted that there was monthly meeting of the Gram Panchayat that was called on 31-07-2021 and the mother of the informant, being the member of the Gram Panchayat, was required to remain present. Copies of the notices given by Gram Panchayat and the acknowledgments thereof of about 15 members have been collected. The notice was given on 25-07-2021 itself. Reference of the same is in the complaint. When informant had taken his mother to the Gram Panchayat, at that place the appellants accused had intercepted and then role is attributed to each of the accused. Taking into consideration the role attributed, when *prima facie* case was made out and all of them were acting in furtherance of the common object, the applications filed by all of them were barred. The medical evidence as on today is the leaf from register kept at the Primary Health Center, Patrud. Final certificate is not received as, thereafter, the said Medical Officer has been suspended.

Efforts are on to get the final certificate. The documents as on today would disclose that the informant had received injury over head, on the left parietal bone of skull which was 3 cm x 0.5 cm. Secondly, he had received abrasion over left side of abdomen which was 5cm x 1cm and there was complaint of nausea and giddiness. There is also entry regarding CLW over left parietal bone of skull and also suturing of wound. It appears that informant was then referred to SRTR, Ambejogai for further management of health injury. The weapons used in the commission of the crime are yet to be recovered especially the iron rod which was allegedly used by accused No.2 and therefore, the physical custody of the appellants is required.

7. At the outset the FIR appears to be outcome of directions given under Section 156(3) of Cr.P.C. by the Special Judge under the Atrocities Act, Majalgaon by order dated 19-09-2022 in Criminal Miscellaneous Application No.19 of 2021. The earlier facts are also relevant when the point regarding delay has been raised on behalf of the appellants. Here the documents have been produced to show that the informant as well as present appellants were the accused persons against whom Crime No. 162 of 2021 was registered on 31-07-2021 on the basis of FIR lodged by the Police Head Constable Ganesh Rathod. The informant himself says that he was arrested on 01-08-2021 but then he says that he was released on bail on or about 20-08-2021. It definitely presupposed that he would have

engaged Advocate but still he had not made any effort to lodge the complaint / FIR through his Advocate. He says that after he was released on bail, he forwarded written complaint to the Police Station on 24-08-2021. As no action was taken, he lodged complaint application to Special Judge on 18-09-2021 for seeking directions for investigation under Sections 156(3) of Cr.P.C. Said application came to be allowed on 19-09-2022 and as a result of it, FIR came to be lodged on 22-09-2022. If this chronology is taken into consideration, it cannot be taken that there is delay of one year. The delay is in respect of decision on the complaint application for issuing directions under Section 156(3) of Cr.P.C. as it was pending before the Court of law. We would like to leave the point for consideration of the trial Court as to whether from 01-08-2021 till 18-09-2021 there was serious delay and whether that delay was of such nature that there was scope for concoction and whether that would have had affected the merits of the case. This is not the proper forum to go much deep into that aspect but only the point of delay cannot be the basis for grant of bail and the other factors are also required to be the considered.

8. Taking the private complaint / Miscellaneous Criminal Application filed by the informant on the basis of which the FIR was registered as it is, we would like to consider the role that has been attributed by the informant to the appellants. It has been stated that the accused No.1 -

Yuvraj had abused the informant on his name on caste and asked him as to why he has lodged case under the Atrocities Act. It is also stated that he had instigated the others who assaulted the informant. Thus, *prima facie* there appears to be case under the Atrocities Act i.e. 3(1) (r) and 3(1)(s) against accused Yuvraj and therefore, when disinclination was shown to grant any relief to him, learned Advocate appearing for appellants submitted that he would withdraw the appeal against him.

9. As regards provisions under Sections 3(1)(r) and 3(1)(s) of Atrocities Act are concerned, the abuse cannot be in chorus or there cannot be common object behind giving such abuses and therefore, those Sections cannot be made applicable against the other appellants. As regards the other appellants are concerned, it will not even attract the ingredients of offence under Sections 3(2)(v) and 3(2)(va) for the simple reason that the contents of the complaint do not suggest that they had acted against informant only on the point that he is the member of Scheduled Caste. As regards the IPC Sections are concerned, accused No.2 is stated to have assaulted the informant by iron rod and the prosecution wants to bring it under Section 307 of IPC. From the record that has been produced, it is noted that while investigating Crime No.162 of 2021 lodged at the hands of Police Head Constable Ganesh Rathod, there is recovery and it is said that sticks have been recovered. It does not say about recovery of iron rod and therefore, learned APP has strongly canvassed that the physical

custody of accused No.2 is required. Here it is to be noted from the documents that even there is recovery at the instance of informant about the sticks in the said Crime No.162 of 2021. Likewise there could have been recovery from accused No.2 also and it appears that those Police personnel, who were at the spot, had never noted the use of iron rod and therefore, they have stated only about use of sticks. In any case only for the sake of recovery of weapon, there cannot be rejection of application for anticipatory bail. Same is the case as regards other three accused persons. It is stated that they have used sticks. Certain sticks have already been recovered and in the FIR the informant was not clear enough in saying which part of his body received injuries and blows those were given by the other three accused persons.

10. Every political connection or political touch to the complaint cannot be so considered to release every accused on bail. Ultimately, it is discretion that is required to be used in each and every case and we consider that the Hon'ble Single Bench of this Court in ***Pravin s/o Shrimant Bhutekar*** (supra) has used its discretion taking into consideration the facts and circumstances of the case before him. It cannot be taken as a ratio.

11. For the aforesaid reasons, we hold that there was no bar for considering the applications filed on behalf of present appellant Nos.2 to 5 under Section 18 of the Atrocities Act. Infact, the learned Special Judge

ought to have segregated act of each of the accused as stated in the FIR before concluding that their case also falls under Sections 18 and 18A of the Atrocities Act. Hence, we proceed to pass the following order :

ORDER

- (i) Appeal stands partly allowed.
- (ii) Appeal stands withdrawn in respect of appellant No.1 after disinclination is shown and leave is sought.
- (iii) Appeal stands allowed in respect of appellant Nos.2 to 5. The orders passed by the Special Judge under Atrocities Act, Majalgaon dated 12-10-2022, rejecting Criminal Bail Application Nos.346 of 2022 and 350 of 2022, stand set aside to the extent of appellant Nos.2 to 5. Their Bail Applications stand allowed.
- (iv) In the event of arrest of appellant Nos.2 to 5 in connection with Crime No.176 of 2022 registered at Dindrud Police Station, District Beed for the offence punishable under Sections 141, 147, 148, 149, 307, 324, 323, 506 of IPC and under Sections 3(1)(r), 3(1)(s), 3(2)(v) and 3(2)(va) of the Atrocities Act, they be released on PR Bond of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.
- (v) They should remain present before the Investigating Officer on every Saturday between 10:00 a.m. to 02:00 p.m. till filing of the charge-sheet.

(vi) They should co-operate with the investigation.

(vii) They shall not tamper evidence of the prosecution in any manner and also not to indulge in criminal activity.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

SPT