

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

**CRIMINAL APPEAL NO.852 OF 2022**

1 Ramdas @ Ramdya Sudam Kale,  
Age 30 yrs., Occ. Agri.,

2 Akshya Vishnu Yadav,  
Age 20 yrs., Occ. Education,

Both are r/o Kautha, Tq. Newasa,  
Dist. Ahmednagar.

... **Appellants**

... **Versus** ...

1 The State of Maharashtra,  
Through Sonai Police Station,  
Dist. Ahmednagar.

2 XYZ

... **Respondents**

...

Mr. Z.M. Pathan, Advocate for appellants

Mr. D.R. Kale, PP for respondent No.1

Mr. S.A. Gaikwad, Advocate for respondent No.2

...

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

**RESERVED ON : 20<sup>th</sup> FEBRUARY, 2023**

**PRONOUNCED ON : 28<sup>th</sup> MARCH, 2023**

**JUDGMENT :**      **[PER : SMT. VIBHA KANKANWADI, J.]**

1            Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order of rejection of application under Section 438 of the Code of Criminal Procedure, 1973 seeking anticipatory bail by the present appellants by filing Criminal Bail Application No.375/2022 before learned Special Judge, under the Atrocities Act, Newasa, Dist. Ahmednagar on 21.10.2022. Both the appellants have been arrayed as accused in Crime No.329/2022 registered with Sonai Police Station, Dist. Ahmednagar, for the offence punishable under Section 376, 354, 452, 323 read with Section 34 of the Indian Penal Code, 1860 and under Section 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “The Atrocities Act”), lodged at the behest of present respondent No.2.

2            Heard learned Advocate Mr. Z.M. Pathan for appellants, learned PP Mr. D.R. Kale for respondent No.1 and learned Advocate Mr. S.A. Gaikwad for respondent No.2.

3            It has been vehemently submitted on behalf of the appellants

that perusal of the First Information Report would show that the incident is alleged to have taken place in the midnight of 25.09.2022, however, the First Information Report has been lodged on 03.10.2022. There is inordinate delay in lodging the First Information Report. Furthermore, the information that has been received from the Police Station would show that the mother of respondent No.2 had lodged a missing report on 26.09.2022 in respect of the informant herself stating that she went missing since 9.30 p.m. on 25.09.2022, however, on the next day it appears that she returned. Statements to that effect of the informant as well as her mother have been taken by the same Police Station on 27.09.2022 show that there was quarrel between the mother and the informant at night time and in anger informant left the house and went to her brother's house. She returned after she calm down and, therefore, the mother of the informant gave it in writing that the missing report should be filed. When the girl herself was missing, how there could have been her abduction or taking her away by the present appellants and ravishing her. The contents of the First Information Report apparently false. This ought to have been considered by the learned Special Judge. The Special Judge has then considered the say of the victim-informant and submitted that CCTV footage of the Police Station about the alleged events of 26.09.2022 and 27.09.2022 in the Police Station would be captured and the genuineness as well as falsity in the First Information Report would be

considered. These are the wrong observations. When material to that effect has been produced by the police itself, then they should be considered in its proper perspective. No such incident as alleged in the First Information Report has taken place. Further, it appears that the informant and the mother are in habit of lodging such reports against the villagers. It is harassment to the people. The learned Advocate for the appellants therefore prayed for setting aside the impugned order and grant of anticipatory bail to the appellants. He also submitted that since the interim order is passed in favour of the appellants, they have attended the Police Station and cooperated with them. The further physical custody of the appellants is not required for the purpose of investigation.

4           Per contra, the learned PP as well as the learned Advocate for respondent No.2 have strongly opposed the application. They have supported the reasons given by the learned Special Judge and submitted that since prima facie case has been made out for the offence under the Atrocities Act, there was bar to the application filed by the present appellants under Section 438 of the Code of Criminal Procedure. It has been vehemently submitted on behalf of prosecution that the investigation is still in progress on various aspects. Statement of the brother of the victim is yet to be recorded, with whom it is alleged in the inquiry into missing report that she

was with him. Even if the record says that the mother of the victim had given it in writing that the missing report should be filed; yet, in view of the fact that the victim is now denying that any such report was given by her mother or even the statement was given by her on 27.09.2022. All those aspects will have to be gone into. Learned Advocate for respondent No.2 has strongly submitted that the informant-victim is illiterate. She can barely sign. Her mother is totally illiterate and she gives thumb impression. They were not even made aware about on which document their signature is taken or thumb impression is taken. In fact, they had gone to lodge the report about the rape that was committed on the victim, initially it was not taken on 26.09.2022 and, therefore, the mother and the victim had gone to the Police Station on 27.09.2022. Their signature and thumb impression was taken on blank paper. Thereafter also the informant was going to Police Station, time and again, to lodge the report, however, it was not taken. Therefore, she filed a complaint with Superintendent of Police on 30.09.2022. The victim is now the victim of police authorities. Copy of the complaint application given by the victim to Superintendent of Police and the Police Inspector of Sonai Police Station on 30.09.2022 is made available. The learned Trial Judge was right in saying that the said aspect regarding the genuineness of First Information Report is still under question and, therefore, benefit of the same cannot be given to the appellants. The application has been rightly rejected.

5           At the outset, it will not be out of place to mention here that when it was found that the appellants are very much relying upon the missing report lodged by the mother of respondent No.2 as well as the statements of the said mother and informant herself taken on 27.09.2022, this Court thought it fit to direct the Police Station to produce CCTV footage of the Police Station of 26.09.2022 and 27.09.2022. It was called in a pen drive in a sealed packet. We had also called the affidavit of the informant and accordingly it is produced. The said CCTV footage was seen only by the Bench members and when it came for identification, the Advocate for respondent No.2 was called and transcript of the same was given by the Investigating Officer. It can be seen that the CCTV footage has been given of camera No.3 only by the Investigating Officer. He has not made any statement about where the camera Nos.1 and 2 have been installed. Why only camera No.3's CCTV footage was produced is also not made clear, but what we could see from the said camera was the entry gate and the first room. It is seen that on 26.09.2022 the mother had come to the Police Station and the writing started around 15.52 hours. Around 20.18 hours on the same date she had again come and it is seen that even the informant was along with her. On the same day the Police Constable, who was assigned with the inquiry of the missing report, has not taken any statement. The statements are stated to be taken on 27.09.2022, on which now the

appellants are relying. Now, the explanation that has been tendered on behalf of the said Police Officer as well as by Sub Divisional Police Officer, who is the Investigating Officer, that the said Police Officer to whom the inquiry of missing report was assigned was not present in the Police Station as his duty time was over and, therefore, the mother of respondent No.2 and respondent No.2 were called on the next date. We are not convinced with the reason. Whoever might be in the Police Station as Police Station In-charge ought to have recorded the statement. It could not have been left to the person to whom the inquiry or the investigation has been assigned. It was merely the work of recording statement. But now, the informant and her mother are denying the fact that any such statement was given by them. The fact remains that they both had gone to Police Station on 26.09.2022. It can also be seen that on 27.09.2022 the informant had gone to the Police Station. Her mother was also there and she was there for a considerable time. Police Naik Mr. Tupe, who appears to be assigned with the work of inquiry of missing report, just closed down the said report after taking those alleged two statements. But he has not recorded any statement of brother of respondent No.2. If we consider the missing report, it was in fact told by the mother of the informant that when she found that the daughter is missing, she had made inquiry on phone to her both sons. If the informant had gone to the place of her son i.e. brother of the informant, then he would have

definitely told about it to the mother. Still the said Police Naik did not find it reasonable to make any inquiry with the brother of the victim. There appears to be something in the entire case which requires investigation.

6           As regards the allegations and merits of the case are concerned, it is contended by the informant that when she was sleeping in the house, somebody had knocked the door and thereafter by breaking open the door three persons came holding liquor bottles in their hands. She had identified them. They were appellants and one more accused. They had forcibly taken her to the adjoining field and then they had committed forcible intercourse. She states that thereafter her mother had came shouting and searching for her. She put clothes on her son and after they could come out of the mental shock they had gone to lodge the report with Police Station. She has specific words stated that she is the member of Scheduled Tribe and the appellants are not such members. Therefore, apparently the offence can be said to have been made out against the appellants.

7           We have perused the papers of investigation also. It is rather surprising that he is collecting those documents also which are in respect of the complaint lodged by the mother of victim. He cannot approach a matter with prejudices. Investigation has to be fair. Involvement of the informant or

her family member in any offence cannot be the criteria for not investigating the present First Information Report. When the First Information Report is lodged, it has to be taken to its logical end and the investigation has to be fair. No doubt, the investigation papers also show that the medical certificate does not show recent signs of sexual intercourse but the fact remains is that the medical examination of the informant was carried out after the First Information Report i.e. after about 6-7 days of the incident. It appears that the statement of the informant under Section 164 of the Code of Criminal Procedure has also been recorded, which is consistent. Statements of her parents are also recorded and, therefore, there is some material against the appellants. The only material on which the appellants have relied is the missing report and as per the discussion above the said fact will have to be gone into by the Investigating Officer. We have taken a note of the arrival of the informant in the Police Station on that day. We, therefore, hold that in view of the fact that the prima facie evidence is available against the appellants, their application under Section 438 of the Code of Criminal Procedure was barred under Section 18 and 18-A of the Atrocities Act. The learned Special Judge was justified in rejecting the bail application filed by the present appellants. There is no merit in the present appeal. It deserves to be dismissed. Accordingly, it is dismissed. The pen drive, which was called in this case should be sent to the Court of Special Judge, under the

Atrocities Act, Newasa, to make it a part of the case record, if the charge sheet is produced. If charge sheet is not produced, then pen drive should be disposed of under the orders of learned Special Judge.

( Abhay S. Waghware, J. )

( Smt. Vibha Kankanwadi, J. )

Date : 28.03.2023.

**Later on :**

8            After pronouncement of the Judgment, learned Advocate for the appellants seeks extension of the interim protection to the appellants for further four weeks, as they intend to approach the higher Court.

9            Taking into consideration the fact that appellants were protected earlier since November, 2022, the interim protection granted earlier is extended for two weeks from today.

( Abhay S. Waghware, J. )

( Smt. Vibha Kankanwadi, J. )