

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.859 OF 2022

1. Ambadas s/o Harihar Rathod
Age: 45 years, Occu.: Service,
 2. Vikas s/o Shivaji Rathod
Age: 28 years, Occu.: Labour,
 3. Shivaji s/o Harihar Rathod
Age: 48 years, Occu.: Labour,
All R/o Gadadgavn Wadi Tq. Jintur,
Dist. Parbhani
 4. Pradip s/o Ambadas Rathod
Age: 25 years, Occu.: Service,
R/o. Itoli, Tq. Jintur and Dist. Parbhani
- .. Appellants**

Versus

1. The State of Maharashtra
Through Police Station Jintur,
Tq. Jintur, Dist. Hingoli.
 2. Mangesh s/o Ananta Khillare
Age: 25 years, Occu.: Agri.,
R/o. Gadagvan, Tq. Jintur,
Dist. Parbhani.
- .. Respondents**

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Mr. J. V. Deshpande h/f Mr. B. N. Magar, Advocate for appellants.
Mr. A. M. Phule, APP for respondent No.1 - State.
Mr. V. A Mundhe, Advocate for respondent No.2 (Appointed).

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

**RESERVED ON : February 10, 2023.
PRONOUNCED ON : February 20, 2023.**

ORDER :-

. Present appeal has been filed by the original accused persons under Section 14-A(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") challenging the order of rejection of their application under Section 438 of the Code of Criminal Procedure in Criminal Miscellaneous Bail Application No.983 of 2022 by learned Special Judge, under the Atrocities Act/Additional Sessions Judge-4, Parbhani on 08.11.2022. The appellants have been arrayed as accused in the FIR vide Crime No.417 of 2022 registered with Jintur Police Station, Dist. Parbhani for the offences punishable under Sections 341, 326, 323, 504 read with Section 34 of Indian Penal Code and under Section 3(1)(r), 3(1)(s) of the Atrocities Act. The said FIR was lodged on 19.10.2022 in respect of the incident dated 09.10.2022.

2. Heard learned Advocate Mr. J. V. Deshpande holding for learned Advocate Mr. B. N. Magar for the appellants, learned APP Mr. A. M. Phule for respondent No.1 - State and learned Advocate Mr. V. A. Mundhe for respondent No.2 (Appointed).

3. It has been vehemently submitted on behalf of the appellants that the incident alleged to have taken place on 09.10.2022 at two places. Firstly around 10.00 a.m. in the field and secondly at 5.30

p.m. near Wadi Phata. There is total suppression of offence lodged by appellant No.1 against respondent No.2 on 17.10.2022 with the same police station vide Crime No.415 of 2022 for the offences punishable under Sections 307, 384, 504, 506 read with Section 34 of Indian Penal code. It is in respect of the incident dated 09.10.2022 between 13.00 hours to 17.00 hours. The FIR against the present appellants was in the form of counter blow and it was to take benefit of the caste of the informant. In fact, appellant No.1 was seriously injured in the incident and was admitted to Civil Hospital, Parbhani. He was then shifted to Parhbani ICU and Trauma Care Hospital, where he was operated and was discharged on 19.10.2022. While undergoing treatment, he had filed the said complaint vide Crime No.415 of 2022. It is further contended that the weapon used in the commission of the crime is knife. The incident alleged to have taken place in the field, cannot attract the ingredients of Atrocities Act, as it cannot be said to be the place which was within the public view. The incident at 5.30 p.m. is exaggerated and no such abuses in the name of caste were ever given. Appellant No.4 is in government service and he has been implicated with oblique motive. The possibility of the injuries caused to the informant when he was assaulting appellant No.1 and others cannot be ruled out. The physical custody of the appellants is not necessary and, therefore, they deserve to be released on bail.

This aspect was not considered by the learned Trial Court and, therefore, they approached this Court. Interim protection has been granted to the applicants by order dated 17.11.2022 and the appellants have corroborated the investigation. They have not breached any terms of the bail and, therefore, the appeal deserves to be allowed.

4. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 have strongly opposed the appeal and submitted that perusal of the FIR would show that it is attracting offence under the Atrocities Act and, therefore, in view of the bar agreed under Section 18 and 18-A of the Atrocities Act, their application before the learned Special Judge under Section 438 of the Code of Criminal Procedure was not maintainable. The delay in lodging the FIR has been explained by the informant. He was discharged from the hospital on 18.10.2022 and, therefore, the FIR on 19.10.2022 cannot be said to be suffering from delay or laches. Learned Advocate appearing for respondent No.2 has relied on the decision in ***Prathvi Raj Chauhan Vs. Union of India and Ors., (AIR 2020 SC 1036)***, wherein the scope of Section 18 and 18-A of the Atrocities Act have been clarified. It is clearly stated that if there is *prima facie* case made out attracting the provisions of the Atrocities Act, then the application under Section 438 of the Code of Criminal

Procedure would be barred under Section 18 of the Atrocities Act. This view was already taken by the Hon'ble Supreme Court in ***Vilas Pandurang Pawar and Ors. Vs. State of Maharashtra and Ors., (AIR 2012 SC 3316)***, wherein it has been observed that :-

"Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been *prima facie* made out. In other words, if there is specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail"

The investigation is still pending and, therefore, the physical custody of the appellant is required.

5. We would like to say that the law has been crystallized in ***Prathvi Raj Chauhan (Supra)***. No doubt it would be as per ***Vilas Pandurang Pawar (Supra)*** duty of the Court to verify the facts. If the *prima facie* case is made out, then the application will not be maintainable. Now, whether *prima facie* case has been made out or not will have to be ascertained by an apparent scrutiny of the facts of the case. No doubt, the incident is stated to have taken place on 09.10.2022 at two places at different times, but the FIR came to be lodged on 19.10.2022 and it shows the delay in lodging the FIR,

however, in the FIR itself, it is stated that immediately after the incident, the informant was taken to hospital at Jintur and thereafter, he was referred for further treatment with the Government Hospital, Parbhani. It is stated that since the left hand bone was fractured, Doctor fixed it with inserting a rod. He was discharged from the hospital on 18.10.2022 i.e. from the Civil Hospital at Nanded. A question got cropped up taking into consideration the other documents produced by the appellant No.1 as to where he was between 09.10.2022 to 15.10.2022. His discharge card from N__ Hospital showed that he was admitted there on 15.10.2022. Therefore, we called the documents and explanation from the investigating officer regarding the information about the status of the informant. In response to the same, the Investigating Officer has caused certain documents to be produced. Though the Investigating Officer asked to remain personally present, did not remain present. He has got the bed ticket/the documents maintained for the indoor patient, which showed that he was admitted in Civil Hospital, Parbhani on 10.10.2022 and he was referred from the Rural Hospital, Jintur. It was stated that the history that was given by the informant was assault seven hours back. Further, the said document shows that he was shifted to Government Medical Hospital, Nanded on 15.10.2022. The discharge summary from Government Hospital,

Nanded also gives history of assault around 10.15 p.m. on 09.10.2022. The documents further show that he had suffered fracture to left middle third shaft of radius and alna and he was required to undergo operation thereby rod has been inserted. Therefore, we could get some support to his statement that he was admitted in the hospital from 09.10.2022 to 18.10.2022. Whether the said ground shown by him was sufficient to explain the delay caused in filing the FIR would depend upon the evidence that would be led. At this stage itself, we would like to say that the appellants are relying on the FIR vide Crime No.415 of 2022 lodged by appellant No.1, but that is also lodged on 17.10.2022 in respect of incident dated 09.10.2022. So there is also delay and almost same reason has been given that is hospitalization of appellant No.1.

6. It can be seen from the cross FIR's that certainly incident has taken place, if we consider the FIR lodged by appellant No.1. There also he has stated that the incident had taken place at two different places. One at 11.00 p.m. near the field of one Chandramuni Khillare and the second is around 5.00 p.m. near Wadi Pata. Now, the question is whether the present FIR i.e. Crime No.417 of 2022 is giving rise to the offence under the Atrocities Act. As regards the first incident is concerned, it is also stated by him that it took place near the field of Chandramuni Khillare and from the spot panchanama

which was made available in the police papers, we could not find any public road nearby the said field, from where anybody could have heard the abuses or the insult in the name of caste. However, it is to be noted that the second incident at 5.30 p.m. is said to have taken place on road i.e. Wadi Phata and at that place also, the abuses were given. It is not only the abuses which could not have been in chorus, but still the allegations regarding the assault. Each one of the appellants has been assigned role for the assault. Weapons are also described that is iron rod and stones. Under such circumstance, the second incident would definitely *prima facie* attract the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act and, therefore, the application by the appellants under Section 438 of the Code of Criminal Procedure was barred under Section 18 of the Atrocities Act.

7. We do not find any illegality or error committed in the procedure by the learned Special Judge while considering the bail application filed by the appellants. The order of interim protection passed by this Court cannot be made use of by the appellants, since the appellant's application for grant of bail itself was barred.

8. As there is no merit in the appeal, it deserves to be dismissed. Accordingly, it is dismissed.

9. 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 the High Court Legal Services Sub Committee, Aurangabad.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm