

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.307 OF 2023

1. Naina Sunil Jamdar, Aged about 34 years, Occupation : Housewife, Resident of Manora, Tahsil Manora, District Washim, Maharashtra
2. Sunil s/o Mahadeo Jamdar, Aged about 40 years, Occupation : Agriculturist, Resident of Manora, Tahsil : Manora, District Washim, Maharashtra.
3. Vitthal s/o Ghynuji Sawant, Aged 70 years, Occ. Labourer, R/o Near Juni Nagar Parishad, Washim, Tq. And Dist. Washim, Maharashtra.

... APPELLANTS.

VERSUS

1. State of Maharashtra, through S.D.P.O. Officer, Washim, Tahsil and District Washim.
2. XYZ, The informant in Crime No.0177/2023 Registered at Police Station, Washim, Tahsil, and District Washim.

... RESPONDENTS.

Shri Rugved Dhore, Advocate for the appellants.
Shri V.A. Thakare, A.P.P. for the respondent/State.
Shri Raju Kadu, Advocate for respondent no.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
CLOSED FOR JUDGMENT ON : 28.06.2023.
JUDGMENT PRONOUNCED ON : 14.07.2023.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard.

2. **ADMIT.** The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. This is an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act') calling in question the order of rejection of pre-arrest bail by the Trial Court vide order dated 12.04.2023. It is the appellants' case that police papers does not disclose *prima facie* case to constitute the alleged offence. The appellants are noway concern with the death of the victim, however an after thought report has been lodged to harass and humiliate the appellants.

4. The learned A.P.P. appearing for the State and learned Counsel appearing for the respondent no.2-informant resisted the

appeal by pointing towards seriousness of the offence. Moreover, it is submitted that due to statutory bar created under Section 18 of the Atrocities Act, the appellants are not entitle for the relief claimed.

5. The victim girl aged 24 years was the daughter of the informant. There was long standing love relationship in between the victim and a boy namely Sagar. Appellants are father, sister and husband of sister of Sagar. It is informant's case that the love affair was going on since their college days. The informant once asked Sagar about the love relationship on which he stated that they had already married prior to four years in the temple. Later on, the victim learnt that Sagar married elsewhere and also having one child from said wedlock. Therefore, on 26.02.2023, the victim girl (deceased) went to the house of the Sagar to question him about his marriage. According to the informant, at relevant time, appellants were in the house who quarreled with her. The appellants gave her poisonous drink, which she consumed. Victim girl disclosed said fact telephonically to her father. After realizing that, the informant-father immediately went to the Police Station, where victim and Sagar had already reached. The Police sent victim to the Government Hospital and as her parents did not accept, victim went to Shelter house. After two days the victim felt uneasy, therefore she was admitted to the Hospital. The victim girl died

on 04.03.2023 by poison, therefor, the informant father lodged the report. It is informant's case that on 26.02.2023, the appellants who are the family members of Sagar had deceitfully gave her poisonous drink, which took her life and thus, it is a case of homicidal death.

6. Learned Counsel appearing for the appellants has strongly criticised the prosecution case as set out in police papers. We have gone through the First Information Report as well as the investigation papers. As per the FIR, dated 26.02.2023 itself the informant-father was made to known from the victim that she was administered poison by appellants however he did nothing. The victim died due to consumption of poison on 04.03.2023, however again for next 14 days, he never lodged the police report, which speaks itself.

7. We have examined the case diary. The medical report dated 26.02.2023 bears reference that the patient has consumed poisonous substance. Moreover, on 26.02.2023, the victim gave in writing to the Police that she had dispute with Sagar and with her own will, she is going to the shelter home. On 27.02.2023, the victim gave a statement to Sakhi One Stop Centre at Washim i.e. shelter house about her love affair, dispute with Sagar and willingness to stay at centre. Pertinent to note that on 26.02.2023 or on 27.02.2023, the victim did not disclose

that the appellants had administered poisonous substance to her. This circumstance strongly supports the appellants case that the victim had consumed poisonous substance at her own, which was later on colored as an offence. After demise of the victim on 04.03.2023, Marge inquiry was conducted however, no one has alledged against the appellants till the lodgement of FIR dated 18.03.2023.

8. Having regard to the *prima facie* material, this Court has granted interim protection to the appellants vide order dated 04.05.2023 and directed to periodically attend the concerned Police Station. There is no compliant that the appellants either did not attend the Police Station or had not cooperated for the investigation. In the above peculiar facts, the appellants liberty can be protected by imposing certain conditions.

9. So far as the statutory bar is concerned, the appellants have placed heavy reliance on the three Judge bench decision of the Supreme Court in case of ***Rehna Jalal vs. State of Kerala and anr. (2021) 1 SCC 733***, wherein it is observed that Section 18 and 18-A of the Atrocities Act have no application where *prima facie* case is not made out and in such cases anticipatory bail can be granted. Though respondent no.2 relied on the decision of the Supreme Court in case of

Prathvi Raj Chauhan vs. Union of India and ors. (2020) 4 SCC 727

however in said decision the Supreme Court equally stated that in absence of *prima facie* case, the Court has inherent powers to grant pre-arrest bail. Learned Counsel for the respondent no.2 relied on the decision of the Supreme Court in case of ***Dr. Subhash Kashinath Mahajan vs. State of Maharashtra and anr. (2018) 6 SCC 454***, wherein also it is reiterated that there is no absolute bar against grant of anticipatory bail, if *prima facie* case is not made out.

10. Learned Counsel appearing for the respondent no.2 by placing reliance on the decision of the Supreme Court in case of ***Vilas Pandurang Pawar and anr. Vs. State of Maharashtra and ors. (2012) 8 SCC 795*** would submit that at this stage, scope of appreciation of evidence is very limited. There can be no dispute about the said proposition of law, however it is a matter to be assessed on the facts of each case. Learned Counsel for the respondents also relied on the decision in cases of ***Shakuntla Devi vs. Baljinder Singh (2014) 15 SCC 521 and Swaran Singh and ors. vs. State through Standing Counsel and anr. (2008) 8 SCC 435***, which would not help him to further his case. In *catena* of decision of the Supreme Court has clarified that in absence of *prima facie* case, the Court has inherent jurisdiction to grant pre-arrest bail.

11. Learned Counsel for the appellants relied on the decision of the Supreme Court in case of ***Hitesh Verma vs. State of Uttarakhand and anr. 2021 Cri.L.J.1 SC*** to contend that unless the act is committed on account of victim belonging to the scheduled caste or scheduled tribe, the offence is not complete. In that regard, it reveals that the alleged act was not on account of victim's caste, but on account of strained love relationship. Reverting to the facts, there is inordinate delay in lodgement of FIR. Non-disclosure by father despite death by poisonous substance, is a matter for consideration. The victim had not disclosed in her statement till her death that, the appellants had administered poisonous substance to her. Thus, no *prima facie* case is made out to attract the charged offences. Besides that the appellants are already under protection against whom there is no complaint of misuse of liberty.

12. Having regard to the above facts, this is a fit case where judicial discretion can be exercised to protect the personal liberty. In view of that following order :

(a) The appeal stands allowed and disposed of.

(b) We hereby quash and set aside the impugned order dated

12.04.2023 passed in Misc. Criminal Application No.121/2023, 138/2023 and 139/2013 at Exhibit 1 by the Trial Court.

(c) The interim order dated 04.05.2023 passed by this Court is hereby made absolute upon same terms and conditions.

(d) The appellants shall continue to attend the concerned Police Station as directed earlier till filing of the charge-sheet.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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