

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 832 OF 2024

Pramod Vishwanath Gaikwad

... **Appellant**

Versus

The State of Maharashtra And Ors.

... **Respondents**

Mr. Alankar Kirpekar a/w Mr. Ashish S. Ingle *for the Appellant.*

Ms. Anuja S. Gotad, *APP for Respondent No.1-State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 13 NOVEMBER 2024.

P.C. :

1) This Appeal is filed under the provisions of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging the order dated 16 July 2024 passed by the learned Additional Sessions Judge, Kalyan allowing the Application filed by the Respondent Nos. 2 and 3 for grant of pre-arrest bail in connection with C.R. No. 422 of 2024 registered with Khadakpada Police Station, for offences punishable under Sections 341 and 34 of the Indian Penal Code, 1860 read with Sections 3(1)(r)(s), 3(1)(g) and 3(2)(5) of the SC & ST Act.

2) I have heard Mr. Kirpekar, the learned counsel appearing for the Appellant. The main grouse put forth by Mr. Kirpekar is that during the course of hearing of the Anticipatory Bail Application, the Appellant/Original Complainant was represented by his Advocate, but the learned Judge refused to permit the Advocate of the Appellant to argue and oppose the application. He would submit that the learned Judge put a query to the Advocate of the Appellant as to whether he could be permitted to argue and oppose the application on behalf of the victim in absence of any provision to that effect under Section 15-A of the SC & ST Act. Mr. Kirpekar has invited my attention to paragraph '2' of the impugned order, which records that the learned Judge has heard the Complainant, but not his advocate. He would also draw my attention to the Pursis dated 10 July 2024 filed by the learned advocate engaged by the Appellant. The Pursis dated 10 July 2024 reads thus:

IN THE HON'BLE COURT OF SPL JUDGE
AT ATROCITY COURT AT KALYAN
ABA NO 1191/2024

Yashwant lokhande & 1.

... Applicants

V/s

State of Mah & 1

... Opponent

Pursis

That while arguing in Present bail application on behalf of victim, Hon'ble court raised query to the advocate of victim that "whether he Can argue on behalf of victim. as there is no provision in sec 15A of the SC & ST (POA), Act for advocate for argument" & also asked to satisfy for the same.

Regarding above said query of Hon'ble court, 9 am filing constitutional bench Judgement "Cri. Appeal 632 of 2022" "Jagjeet Singh vs Ashish Mishra" at 18/4/22 on record passed by Hon'ble supreme court, hence this Pursis-

Filed on: 10/7/2024

Adv for victim

3) Under provisions of sub-section 5 of Section 15-A of the SC & ST Act, the victim or his dependent is entitled to be heard at any proceedings under the Act including the proceedings for anticipatory bail. Sub Section 5 of Section 15-A reads thus:

"15A(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing."

It would be too hyper technical to construe provisions of sub-section 5 of Section 15-A to mean that only victim is entitled for hearing and that the advocate engaged by the victim would not be permitted by the Court to oppose the application for bail. Therefore, if the learned Judge has indeed prevented the advocate for the Appellant to oppose the bail and has proceeded to hear only the Complainant, it would clearly violate the provisions of sub-section 5 of Section 15-A of the Act. I do not find any provision, which restricts an advocate engaged by the Complainant to argue and oppose any proceedings before the Special Court. In this regard reliance by Mr. Kirpekar on observations made by Division Bench in ***Kishor Shivdas Shinde Vs. State of Maharashtra through its Police Inspector, Sarangkheda Police Station and Anr.***¹ appears to be apposite. This Court has taken note of the findings recorded in judgements in ***Hariram Bhambhi Vs. Satyanarayan***,² ***Amol s/o Babasaheb Sonawane @ Sonu Fitter Vs. The State of Maharashtra***³ and ***Raees Hanif Sayyed Vs. The State of Maharashtra***⁴ and has held in paragraphs 7 and 8 as under:

1 2023 SCC Online Bom 1514

2 Criminal Appeal No.1278 of 2021

3 Criminal Appeal No.919 of 2022

4 Criminal Appeal No.293 of 2023

7. Before we consider the facts of the case and see as to whether the trial Court has used the discretion appropriately or not, we would like to say that the learned Special Judge has written a very cryptic order, that too, without following the mandatory provisions. It is in fact high time to tell all the Special Judges under the Atrocities Act, as to what they should consider while dealing with the bail applications. This has been told again and again but still we do not find improvement in the same. In Criminal Appeal No. 919 of 2022 (Amol s/o Babasaheb Sonawane @ Sonu Fitter v. the State of Maharashtra) and the Companion matters, decided by this Court on 20th February 2023, this Court has made following observations in paragraph Nos. 12 to 15 of the order:-

12. Further, before going to consider the merits another situating has arisen which is of wide importance, as this Court is coming across various such orders by Special Judges under the Atrocities Act that they are not following/observing the mandatory requirement under Section 15-A of the Atrocities Act. Section 15-A of the Atrocities Act gives statutory right to the victim to get the knowledge about the proceedings before the Court including bail application.

13. In Hariram Bhambhi v. Satyanarayan (supra), it has been observed that victims are often relegated to the role of being a spectator in the criminal justice system. The victims of crime often face hurdles in accessing justice from the stage of filing the complaint to the conclusion of the trial and therefore, those rights of the victims have been acknowledged by the Hon'ble Supreme Court as well as those are incorporated under Section 15-A of the Atrocities Act. In connection with the said provision, in the aforesaid decision, it has been held in Paragraph Nos. 13, 14, 15 and 18 as under:-

"13. Section 15A of the SC/ST Act contains important provisions that safeguard the rights of the victims of caste-based atrocities and witnesses. Sub-sections (3) and (5) of Section 15A specifically make the victim or their dependent an active stakeholder in the criminal proceedings. These provisions enable a member of the marginalized caste to effectively pursue a case and counteract the effects of defective investigations. Subsections (1) to (5) of Section 15A are extracted below:

"15A(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victims age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing."

(emphasis added)

14. Sub-section (3) of Section 15A confers a statutory right on the victim or their dependents to reasonable, accurate, and timely notice of any court proceeding including a bail proceeding. In addition, sub-section (3) requires a Special Public Prosecutor or the State Government to inform the victim about any proceeding under the Act. Sub-section (3) confers a right to a prior notice, this being evident from the use of the expression "reasonable, accurate, and timely notice of any court proceeding including any bail proceeding". Sub-section (5) provides for a right to be heard to the victim or to a dependent. The expression "dependent" is defined in Section 2(bb) thus:

"2(bb) "dependent" means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance;"

15. The provisions of sub-section (3) which stipulate the requirement of notice and of sub-section (5) which confers a right to be heard must be construed harmoniously. The requirement of issuing a notice facilitates the right to be heard."

"18. The finding of the Gujarat High Court that the requirement of issuing notice of a court proceeding to a victim or a dependent under Section 15A(3), in order to provide them an opportunity of being heard, is mandatory, finds echo in multiple High Court decisions 13 including a decision of the Rajasthan High Court 14. We find ourselves in agreement with the proposition and hold that sub-sections (3) and (5) of Section 15A are mandatory in nature."

14. Further, it has been observed in Paragraph No. 22 in the aforesaid decision of Hariram Bhambhi v. Satyanarayan (supra), that:-

"22. We also emphasize that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well."

15. We are constrained to observe that, many Courts/Special Judges are not following the said procedure which is in fact in derogation to the mandate of the law. Secondly, even if the notice is given, the order that is passed on the bail application is many times silent about the submissions/say put forth by the victim. When the statutory right is given of being heard to the victim, then the natural corollary would be that those submissions which have been put forth by the victim should be reflected in the order by the learned Special Judge.....

8. Further, it will not be out of place to mention here that, again in Criminal Appeal No. 293 of 2023 (Raees Ham Sayyed v. the State of Maharashtra), decided by this Court on 10th April 2023, the above Paragraphs from the decision in Criminal Appeal No. 919 of 2022, (referred above), were taken into consideration and then this Court has made following observations in Paragraph No. 8 of the order:-

"8. The aforesaid order passed by this Court in Criminal Appeal No. 919 of 2022 and other companion matters, has been circulated throughout the State and still the learned Special Judge, Parbhani, in the impugned order, is silent as to whether he had heard the victim-Informant or not. We would like to take the things further. When the victim in such matters are served and if they are unable to engage Advocate because of their financial constraints or otherwise, then such Special Courts should provide legal aid to those victims. The Legal Services Authorities Act provides for giving free legal aid to the members of the scheduled caste or scheduled tribe. Further, it can also be said that such legal aid should be given or Amicus Curiae should be appointed to represent the cause of such victim even in case of failure of the victim to remain present after due service of notice. When it is a substantive right that has been given to a particular class of litigants, then it should be the endeavour of the Courts to respect the said legal right."

4) Mr. Kirpekar has particularly highlighted the observations of this Court in ***Raees Hanif Sayyed*** (supra) in which this Court has taken the things further and has directed that in the event of victims enabling to engage an advocate because of financial constraints, the Special Court is mandated to provide legal aid to such victims. I am in agreement with the submission of Mr. Kirpekar. As observed by this Court in this Court in ***Raees Hanif Sayyed*** (supra) the Special Court can provide legal aid to the victims where they are unable to engage advocate due to financial constraints. Therefore, to expect that the

Complainants/victims must personally argue or oppose proceedings before the Special Judge even though he/she has engaged advocate would be complete travesty of the provisions of sub-section 5 of Section 15-A of the SC & ST Act. In my view, therefore, the learned Judge has grossly erred in not permitting the advocate of the complainant to argue and oppose the application for anticipatory bail.

5) Though I am not in agreement with the procedure adopted by the learned Special Judge in not permitting the Advocate of the complainant to argue and oppose the application for anticipatory bail, I am not inclined to interfere in the order dated 16 July 2024. It appears that the incident has taken place on account of civil dispute relating to ownership and possession of the land. In that view of the matter, I am not inclined to interfere in the discretion exercised by the learned Judge in granting anticipatory bail in favour of Respondent Nos. 2 and 3. Therefore, though the Appeal is dismissed, this Court has not approved the approach of the learned Judge in not permitting the advocate of the Appellant to argue and oppose the application for anticipatory bail. Subject to the above observations, the Appeal stands **dismissed**. Needless to clarify that no observations made in the order shall affect the trial.

[SANDEEP V. MARNE, J.]