



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

CRIMINAL APPEAL NO. 297 OF 2024

1) Sumer Khan S/o Afsar Khan
Aged about 32 years,
R/o. Ningnoor,
Tq. Umarkhed, Dist. Yavatmal.

2) Afsar Khan S/o Bhure Khan,
Aged about 55 years,
R/o. Ningnoor,
Tq. Umarkhed, Dist. Yavatmal.

.... **APPELLANTS**

// VERSUS //

1) State of Maharashtra,
through Police Station Officer Bitargaon,
Tq. Umarkhed, Dist. Yavatmal.

2) Bharti Dilip Kamble (complaint)
In Crime No. 142/2024,
through Police Station Officer Bitargaon,
Tq. Umarkhed, Dist. Yavatmal.

.... **RESPONDENTS**

Mrs. P.V. Ganediwala, Advocate along with Mr. P.R. Agrawal,
Advocate, Mr. Vinay Sharma, Advocate for appellants.
Mrs. M.R. Kavimandan, Assistant Public Prosecutor for
respondent No.1.
Mr. A.M. Jaltare, Advocate for respondent No.2.

CORAM : G.A. SANAP, J.
DATED : 12th JUNE, 2024

ORAL JUDGMENT :

1. Heard. **Admit.** Taken up for final disposal forthwith by
consent of the learned Advocates appearing for the parties.

2. This appeal is filed under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short the “Atrocities Act”). The challenge is to the order dated 08th May, 2024 passed by the learned Additional Sessions Judge, Pusad, whereby the application made by the appellants for grant of anticipatory bail in Crime No.142/2024, for the offence punishable under Sections 354, 504, 506 of the Indian Penal Code (IPC) and Section 3(1)(w)(i), 3(1)(w)(ii), 3(2)(Va), 3(1)(r) and 3(1)(s) of the Atrocities Act registered with Police Station Bitargaon, District Yavatmal has been rejected.

3. It is the case of the appellants that they are falsely implicated in this case. They have not committed the crime as alleged. The omnibus allegations have been made in the First Information Report (FIR). The FIR does not disclose commission of the offences under the Atrocities Act against them. They further contended that as far as main incident is concerned, no allegations have been made against them. The main allegations have been against the accused No.1. It is their contention that the learned Additional Sessions Judge has not properly appreciated the facts recorded in the FIR and rejected the bail application.

4. The respondent State as well as the informant have opposed this appeal. It is contended that the facts stated in the FIR

clearly show that the appellants with the other accused abused the informant in the name of her caste. The specific words uttered by them in the name of her caste have been stated in the FIR. It is contended that bar under Section 18A of the Atrocities Act would get attracted in this case.

5. I have heard learned Advocate for the appellants and learned APP for the State and learned Advocate for the informant. Perused the record and proceedings.

6. Learned Advocate for the appellants submitted that the omnibus allegations have been made in the FIR. The learned Advocate took me through the FIR and pointed out that the main allegations with regard to the commission of offence under Section 354 of the IPC have been levelled against the accused No.1. It is submitted that there is no allegation of assault, beating or use of criminal force to the informant by the appellants. The learned Advocate submitted that the alleged abuses in chorus are unrealistic. On the basis of said omnibus and the chorus utterances, it is not possible to accept the contention that the appellants have committed the offences under the Atrocities Act. In order to support his submissions, he has placed reliance on the following three decisions :

- (i) ***Shashikant Ramhari Tambe & Ors. Vs. State of Maharashtra***, reported in ***2008 ALL MR (Cri) 2132***,

- (ii) ***Pratik S/o Rameshwar Kopulwar and Anr. Vs. The State of Maharashtra and Anr.***, reported in ***2020(2) AIR Bom.R (Cri) 229***,
- (iii) ***Sunil Dashrath Palave Vs. The State of Maharashtra***, reported in ***2015 SCC OnLine Bom 8087***.

7. Learned Advocate for the respondent No.2 – informant submitted that specific allegations have been made against the appellants in the FIR. Learned Advocate submitted that the Court has to look into the specific averments. It is submitted that at this stage, the appreciation of evidence is not permissible. Learned Advocate submitted that the averments made in the FIR *prima facie* make out the offences under the Atrocities Act against the appellants as well. The learned Advocate submitted that such abuses can be uttered in a chorus by more than one person and therefore, at this stage the stand of the appellants cannot be accepted.

8. Learned APP adopted the submissions made by the learned Advocate for respondent No.2. In support of her submissions, she has relied upon the decision in ***Chandrakant Kondji Shinde & Ors. Vs. The State of Maharashtra & Anr.***, reported in ***DLD(Cri)-2023-2203***, wherein it is observed that if material on record clearly shows

the commission of the offences under the Atrocities Act, then the bar under Section 18 and 18A of the Atrocities Act is attracted.

9. I have perused the FIR. Perusal of the FIR shows that the incident can be divided in two parts. As far as first part of the incident is concerned, accused No.1 was involved. It is not the case of the prosecution that the remaining three accused in any manner played any part in commission of an offence under Section 354 of the IPC. The second part of the FIR shows that when the incident with the accused No.1 was going on, the remaining three accused including the appellants hurled the casteist abuses at the informant and extended threat to kill her. It is further seen that in the second part of the incident, specific role has been attributed to accused No.1 in hurling the casteist abuses at the informant. It is seen that as far as the three accused including the appellants are concerned, the allegations are omnibus. According to the informant, all the accused without any reason in chorus hurled the casteist abuses at her.

10. In view of this factual position, it would be appropriate to consider the decisions relied upon by the learned Advocate for the appellants. Perusal of the decisions would show that on facts, the same are applicable to the present case. In all these cases, the allegations were in chorus. It was held that omnibus statement that

all the accused persons uttered allegedly humiliating word may not be enough. It is held that hurling of the abuses in chorus is unrealistic.

11. In my view, considering the omnibus statement attributed to the appellants, the decisions relied upon would be of immense help to the appellants. In my view, therefore, the bar under Section 18 and 18A of the Atrocity Act may not stand in the way of appellants. The learned Additional Sessions Judge has failed to appreciate the facts and law in proper prospective.

12. In view of this, I am of the view that as far as the appellants are concerned, the bar under Section 18 and 18A is not attracted and they are entitled to get anticipatory bail. The main role in commission of the offence under Section 354 of the IPC, as seen from the FIR, is attributed to accused No.1. In view of this, I pass the following order :

- (i) The Appeal is allowed.
- (ii) The order dated 08th May, 2024 passed by passed by the learned Additional Sessions Judge, Pusaad is hereby quashed and set aside.
- (iii) The application for anticipatory bail is allowed.
- (iv) The appellants **Sumer Khan S/o Afsar Khan** and **Afsar Khan S/o Bhure Khan** be released on bail in the event of

their arrest in Crime No.142/2024, for the offences punishable under Sections 354, 504, 506 of the Indian Penal Code and Section 3(1)(w)(i), 3(1)(w)(ii), 3(2)(Va), 3(1)(r) and 3(1)(s) of the Atrocities Act registered with Police Station Bitargaon, on their furnishing PR. bond in sum of Rs.25,000/- (Rs. Twenty Five Thousand only) each with solvent surety in the like amount.

- (v) The appellants shall not tamper with the prosecution evidence and they shall not directly or indirectly extend the threats to the informant and the witnesses.
- (vi) The appellants shall attend Police Station Bitargaon, District Yavatmal twice a week i.e. on Monday and Saturday between 11.00 am. and 02.00 pm.

The appeal Stands **disposed of** accordingly.

(G.A. SANAP, J.)