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Appeal-715-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.715 OF 2024

- 1] XYZ (VICTIM)
2] ABC (INFORMANT) ...APPELLANTS

VERSUS

- 1] The State of Maharashtra
Represented by the Deputy
Superintendent of Police
Through Begumpura Police Station,
Aurangabad Taluka and District Aurangabad
2] Ilyas s/o. Ahmed Khan
Age: 53 Years: Occu: Business
3] Shaheen Fatema w/o. Ilyas Khan
Age: 47 Years, Occu. Doctor,
4] Sultan Mehdi s/o Ilyas Khan
21 years, Occu: Education.
5] Khan Umaima D/o. Ilyas Khan
Age: 22 Years, Occu: Education,

Respondent Nos. 2 to 5 are resident of
Plot No.9, Amkhas Road, Near Dilras Colony
Shahin Bagh, Aurangabad.
Taluka and District Aurangabad.

6] Shaikh Shahed s/o. Shaikh Mukhtar
Age: 23 Years, Occu: Education
R/o. Mehmood Pura, Patel Wada,
Opp. Taj Hotel, Aurangabad.
Taluka and District Aurangabad.

**....RESPONDENTS
(ACCUSED)**

Smt. Rashmi S. Kulkarni and Ms. Namita P. Thole, Advocates for Appellants.

Mr. S. B. Jadhav, APP for Respondent No.1-State.

Mr. S. R. Shirsath h/f Mr. R. B. Gite, Advocates for Respondent Nos. 2 to 6.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 19th AUGUST 2025.

PRONOUNCED ON : 18th SEPTEMBER 2025.

PC :-

1. Heard Smt. Kulkarni, the learned Advocate for the appellants, Mr. Jadhav, the learned APP for Respondent-State and Mr. Shirsath, the learned Advocate for Respondent Nos. 2 to 6. This appeals is heard finally at the stage of admission with consent of the parties.

2. This appeal arises out of an offence bearing Crime No.94 of 2024 dated 07.04.2024 registered with Begumpura Police Station,

Ethape

Aurangabad. Initially, the crime was registered for offences punishable under Sections 354, 324, 323, 427, 143, 147, 149, 504 of Indian Penal Code, 1860. Subsequently, Sections 3(1)(r)(s), 3(w)(i)(ii), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, were added. This application is filed by original informant/appellant No.2, who lodged the FIR with Begumpura Police Station. The informant is appellant No.2. Appellant No.1 is the victim.

3. The impugned order is passed by learned Special Judge & Additional Sessions Judge, Aurangabad in Bail Petition No. 856 of 2024, granting anticipatory bail to Respondent Nos. 2 to 6. The complainant approached Begumpura Police Station alleging that, on 06.04.2024 at around 08:00 p.m. in the evening, she had been to the house of in-laws with her sister alongwith domestic servant victim. There was a matrimonial dispute pending between her sister and her in-laws. On reaching there, accused no.1, husband, his sister and other accused assaulted them. Accused Iliyas father-in-law of sister even tried to

assault the informant with knife. In the incident, she received two injuries of knife on her shoulder. The glass of window was broken, and one piece of glass struck her thereby she received one more injury. Her clothes were torn, and she was confined in a room. It is further alleged that the domestic servant was also outraged by accused Sultan and Iliyas by trying to tear her clothes. During that incident, they also uttered the words in the name of caste of servant. All of them were rescued by father of the informant. On that, crime came to be registered. Though initially, it was registered only under IPC sections, later on, provisions of sections under Atrocities Act came to be added. The accused persons approached the learned Sessions Judge seeking anticipatory bail. The same was granted to accused No.2 to 6 by way of impugned order, and thus, the original informant has approached this Court seeking cancellation of bail.

4. The appellants have filed additional affidavit on 09.06.2025 bringing on record material, subsequent facts, orders passed by the

Court in the proceeding before the family court, and subsequent FIR etc.

5. Ms. Kulkarni, the learned Advocate for the appellants, vehemently argued that the learned trial Judge went to far in granting anticipatory bail to the accused persons. There is a bar under Sections 18 and 18-A of the Atrocities Act to entertain application for anticipatory bail. These sections specifically provide that the provisions of Section 438 of the Cr.P.C. are not applicable when offences punishable under the Atrocities Act are made out. In the present case, it is clear that the domestic servant was abused in the name of her caste. While doing so, her clothes were torn, outraging her modesty, by two accused persons, namely, Iliyas and Sultan. It is the accused and the informant who are close relatives. There is a previous background i.e. in January 2024, one FIR was lodged by the mother of the victim and the informant as the accused had entered the house and had taken the child of the victim forcibly since she was staying separately with her parents. In that case, bail had already been granted in the event of arrest. After addition of section

363 of IPC in that offence, bail came to be cancelled. The father of the husband of the victim was also arrested in connection with offence under POCSO Act and NDPS Act. He is presently behind the bar. On 06.04.2024, the mother was called by the victim to see the child. Therefore informant and victim had been the house of the accused. There the assault took place resulting the injuries. Though there is cross FIR by co-accused, the same is only as counterblast. The said cross complaints also show that the child of the couple is with the husband. The learned trial Judge inspite of specific argument about the bar under Section 18-A, allowed the application. She argued about the subsequent conduct of the accused persons. The subsequent conduct shows that the accused persons have not abided by the orders passed by the learned Family Court in respect of custody of child. In family Court, appeal challenging the interim relief is also refused, and still, the custody of the child is with the husband. Now, the father of the husband is even from Aurangabad. On such grounds, she submits that the bail of the present respondents deserves to be cancelled.

6. Mr. Shirsath, the learned Advocate for the respondent Nos. 2 to 6/accused vehemently opposed the appeal. He submits that there is even FIR lodged by accused within gap of 10 days. It cannot be said that the FIR is counterblast. He submits that there is CCTV footage where entire episode is captured. The said footage does not show any role of the accused. The FIR filed by the respondents is first in time. It is now more than a year that the accused are protected by liberty, and till now, no any instance is alleged of misuse of liberty. He thus submits that this appeal deserves to be dismissed.

7. Mr. Jadhav, the learned APP supports the case of the appellant. It is submitted that the bail could not have been granted. The recovery is yet to be made of the incriminating material i.e. knife used by accused Iliyas. Thus, the learned APP prays for cancellation of bail application.

8. This Court has seen the FIR and charge-sheet. During the course of argument, the appellants relied upon the judgments in the cases of

*Prathvi Raj Chauhan Vs. Union of India and Ors.*¹ and *Kanwar Singh Meena Vs. State of Rajasthan and Ors.*²

9. In the case of *Prathvi Raj Chauhan* (supra), the Hon'ble Apex Court has made observation about the Atrocities in society and practices of untouchability etc. those are still prevalent. It is considered that the provisions of Section 438 of Cr.P.C. are by way of exception. It is considered that the people from scheduled castes and schedule tribes can hardly muster the courage to speak against upper caste persons. The provisions of Section 18-A of the Atrocities Act are therefore specifically made. It is held that the bail ought not to be granted in such cases. The provisions of Section 18 of the said Act are considered on the touchstone of Article 21 of the Constitution of India. It is held that the provision is mandatory and needs to be adhered to. The provisions needs to be made.

1 [2020] 2 S.C.R. 727

2 AIR 2013 SC 296

10. In the case of *Kanwar Singh Meen* (supra), the Hon'ble Apex Court considered the provisions of Section 18 of the Atrocities Act and held that the grant of anticipatory bail is only by way of exception and when there is a specific bar to apply the provisions of Section 438 of Cr.PC., no anticipatory bail be entertained.

11. It is seen that the complaint was filed by Iliyas bearing FIR No. 93 of 2024 with Begumpura Police Station just prior to registering the present FIR. The learned Sessions Judge by way of impugned order observed that the crime was registered only under IPC Sections. The Atrocities Act sections are added subsequently. The facts mentioned in the FIR that the victims were called by in-laws of her sister does not appear to be probable as there are strained relations. He further observed that it is therefore not probable that the victim and informant would go there. The allegations of outraging modesty are made against father-in-law of the informant namely, Iliyas. So far as other allegations, there is no specific allegation under the Atrocities Act. In that view, it is

held that bar under Sections 18 and 18-A of the Atrocities Act could not be attracted and allowed the bail application.

12. This Court finds that there are counter FIRs. The relations between the parties are strained, as is clear from the reference to other litigation in the family Court. This Court, in appeal, has examined the impugned order. This Court finds that the impugned order takes a probable view. This Court does not find any perversity in the order. This court, consequently, does not find any merit in the appeal. The appeal therefore deserves to be dismissed and the same is hereby dismissed.

[KISHORE C. SANT, J.]