



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

901 CRIMINAL APPEAL NO. 950 OF 2024

SANDIP SANJAY RATHOD AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Vivekanand Bhagwanrao Deshmukh, Advocate for Appellants

Mr. S. M. Ganachari, APP for Respondent No.1-State

Mr. T. S. Lodhe h/for Mr. R. M. Deshmukh, Advocate for
Respondent No.2 (Appointed through Legal Aid)

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 20.02.2025

PER COURT :-

1. Heard the learned counsel for the Appellants, the learned APP for Respondent No.1-State and the learned counsel for the Respondent No.2.

2. By the present Appeal, under Section 14A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 482 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, the Appellants have challenged the order dated 01.10.2024 passed by the learned Special Court (Atrocity), Osmanabad, in Anticipatory Bail Application No.435 of 2024, thereby declined to release the accused on Anticipatory Bail.

3. Having regard to the submissions canvassed on behalf of both the parties, I have gone through the record. On face of record it appears that, on 27.08.2024, the Informant (Balu Sopan Suravse) present Non-Applicant No.2 lodged a report with Naldurg Police Station Dist. Osmanabad alleging that, on 27.08.2024, his son Akshay Survase was at home at morning and at that time he was feeling well but on that day, at about 9:30-10:00 a.m., one Manisha Rathod who was working with Dhanwantari Hospital as a Nurse made a call from mobile of Akshay to the Rajesh Lahu Bansode, who is friend of Akshay and thereby informed that, Mr. Akshay the son of Complainant is suffering by some ailment. Therefore, Shri. Rajesh Bansode visited Dhanwantari Hospital and noticed that Akshay was lying on bed and foam was coming from his mouth. Therefore, on advice of the Medical Officer the victim was taken to Dr. Patil Hospital, Naldurg. On information, the Complainant with his wife visited there and thereafter victim was taken to Civil Hospital, Solapur, where on examination of the Medical Officer he declared dead. Accordingly, the Inquest Panchanama was drawn on the dead body of Akshay and the dead body was referred for the post-mortem.

4. According to the Complainant, the Appellants were issued life threat to his son deceased Akshay on ground that, his deceased son was having love affair with a girl who is from their community. Therefore, the present Appellants are implicated in the Crime No.0333 of 2024 registered with Naldurg Police Station for the offence punishable under Section 105, 351(2) of Bhartiya Nyaya Sanhita, 2023 & under Section 3(2), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

5. The learned counsel for the Appellants canvassed that, the entire F.I.R. does not reveal about abusing the victim on his caste at the hands of present Appellants or they have assaulted the victim soon before the death of the deceased (Akshay). It is further canvassed that, the main accused Smt. Manisha Rathod has already released on Regular Bail. The present Appellants are not involved while committing the Crime. However, they are apprehended for their arrest in Crime No.0333 of 2024 registered with Naldurg Police Station on 27.08.2024.

6. The learned counsel for the Respondent No.2 Complainant canvassed that, the son of the Informant was married

and was working as a driver, however, these Appellants Sandip Rathod and Sushil Rathod were issued life threat prior to eight days of the incident that, if he did not keep away from the girl who is belong to their community in that event he will have to face consequences. Thereafter within a period of 8 days, the son of the Complainant died. Therefore, the offence under Section 3(2), 3(2) (va) of Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act and Section 105, and 351(2) of the Bhartiya Nyaya Sanhita, 2023 is attract. Therefore, as per the provisions of Section 18 and 18 (A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the Appellants are not entitled for Anticipatory Bail.

7. On perusal of F.I.R. it appears that, the Informant only made allegation as against the present Appellants Sandip Rathod and Sushil Rathod about issuance of threat to the deceased Akshay, the son of the Complainant, prior to eight days to keep away from the girl of their community. The F.I.R. does not reveal about abusement to the victim on his caste at the hands of the Appellants accused. The Investigation Officer recorded statement of one victim Babu Rathod, the mobile shoppe owner, who stated that prior to three months of

recording his statement the present Appellant No.1 Sandip Rathod had abused the deceased Akshay in filthy language and at that time the Appellant No.2 Sushil Rathod visited there and also assaulted victim with fist and blow and abused him in filthy language. As per the Post-mortem report, the Medical Officer found Therapeutic injection mark in the from the puncture wound present over right sorrrsum of hand, reddish in color. The viscera was collected and sent to the chemical analysis, however, the opinion of the chemical analysis is awaited.

8. In the case of ***Dr. Subhash Kashinath Mahajan V/s State of Maharashtra and Another, (2018) 6 SCC 454*** the Hon'ble Supreme Court considered the question whether there is an absolute bar to the grant of anticipatory bail under SC/ST Act and referred to several decisions including the decisions in the case of Vilas Pandurang Pawar (Supra) and Shakuntala Devi V/s Baljinder Singh (2014) 15 SCC 521 and observed in Para 56 as under:

“There can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny. Thus exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. If this interpretation is not taken, it may be difficult for public servants to discharge their bona-fide functions and in given cases, they can be

blackmailed with the threat of a false case being registered under Atrocities Act, without any protection of law. Even a non public servant can be blackmailed to surrender his civil rights. This is not the intention of law. Such law cannot stand judicial scrutiny. It will fall foul of guaranteed fundamental rights of fair and reasonable procedure being followed if a person is deprived of life and liberty. In paragraphs 57 it was observed that exclusion of 438 Cr.PC. applies when a prima facie case of commission of offence under the Atrocities Act is made out. On the other hand, if it can be shown that, the allegations are prima facie motivated and false, such exclusion will not apply.”

9. In ***State of M.P V/s. Ram Krishna Balothia (1995) 3 SCC 221***, it is held that exclusion of provision for anticipatory bail will not apply when no prima facie case is made out or the case is patently false or mala-fide. This may have to be determined by the Court concerned in facts and circumstances of each case in exercise of its judicial discretion. In cases under the Atrocities Act, exclusion of right of anticipatory bail is applicable only if the case is shown to bonafide and that prima facie it falls under Atrocities Act and not otherwise. Section 18 does not apply where there is no prima facie case or to cases of patent false implication or when the allegation is motivated for extraneous reasons by following judgment reported in AIR 2018 SC 1498) as follows:

“79.1. Proceedings in the present case are clear abuse of process of Court and are quashed.

79.2. There is no absolute bar against grant of anticipatory bail in the cases under Atrocities Act, if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.

We approve the view taken and approach of Gujarat High Court in Pankaj D. Suthar and N.T. Desai and clarify the Judgments of this Court in Balothia and Manju Devi.

79.3. In view of acknowledged abuse of law of arrest in the cases under Atrocities Act, arrest of a public servant can only be after approval by the SSP appointing authority and of a non-public servant after approval of S.S.P. which may be granted inappropriate cases, if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary inquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under Atrocities Act and the allegations are not frivolous or motivated.

79.5. Any violation of directions (79.3) and (79.4) will be actionable by way of disciplinary action as well as contempt.

79.6. The above directions are prospective.”

10. In case-in-hand, it appears that nothing is to be recovered from the accused persons and there is also no necessity to interrogate the present Appellants accused. Therefore, considering the nature of Crime, the Appellants are entitled for the Anticipatory Bail with certain terms and conditions, hence, I proceed to pass the following order.

ORDER

- (i) Criminal Appeal is hereby allowed.
- (ii) The impugned order dated 01.10.2024 passed in Anticipatory Bail Application No.435 of 2024 passed by the Special Court (Atrocity) Osmanabad is hereby quashed and set aside.

(iii) In the event of arrest, the Appellant No.1 Sandip Sanjay Rathod and Appellant No.2 Sushil Sanjay Rathod be released on bail in Crime No.0333 of 2024 registered at Naldurg Police Station Dist. Osmanabad for the offence punishable under Section 105, 351(2) of Bhartiya Nyaya Sanhita, 2023 & under Section 3(2), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on execution of PR and SB Bond in the sum of Rs.25,000/- (Twenty Five Thousand Rupees) with solvent surety of the like amount.

(iv) The Appellants shall attend the concerned Investigating Officer on every Monday between 10:00 a.m. to 02:00 p.m. till filing of the charge-sheet and co-operate with the Investigating Officer, .

(v) The Appellants shall not issue threat to the witness and shall not tamper with the prosecution evidence.

(vi) Fees of Mr. R. M. Deshmukh, the learned Advocate for Respondent No.2 (Appointed Through Legal Aid) is quantified at Rs.5,000/-, to be paid by the Legal Aid.

[Y. G. KHOBRAGADE, J.]