

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.65 OF 2025

Samadhan Vitthal Guthule	]	Appellant
Vs.		
The State of Maharashtra and others	]	Respondents

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Mr. Narayan Rokade a/w Mr. Abhang Suryawanshi, Mr. Harichandra Jadhav, Mr. Udaysingh Deshmukh, Mr. Siddharth Godke, Mr. Vikrant Kadam, for Appellant.

Dr. D.S. Krishnaiyar, A.P.P, for Respondent No.1 -State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 10th FEBRUARY, 2025.

P.C:

1. By this appeal under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocity) Act, 1989 (for short “Act”), an order dated 11th January, 2025 passed by the Additional Sessions Judge, *Niphad* below Remand Application in Crime No.13 of 2025 is challenged by the first informant who admittedly belongs to scheduled caste. Respondents Nos.2 and 3 do not belong to either scheduled caste or scheduled tribe.

2. Learned Counsel for the appellant has raised a short question as regards legality and correctness of the impugned order wherein

the learned Additional Sessions Judge, *sans* application of mind and by grossly ignoring the mandate of Section 15-A of the Act observed that “no satisfactory ground for custodial interrogation of the accused is made out” and, therefore, remanded them to judicial custody.

3. The order is *ex facie* illegal as the learned A.P.P is also *ad idem* with the submissions made by the learned Counsel for the appellant. It appears that the learned Additional Sessions Judge failed to understand or follow the real import of section 15-A of the Act, especially sub-sections 3 and 5.

4. Shockingly, it reveals from the order that even the A.P.P appointed by the State Government to espouse the cause of the first informant was absent. The appeal, therefore, needs to be allowed.

5. As such, the appeal is allowed. The impugned order is quashed and set aside being *ex facie* illegal with a direction to the learned Sessions Judge, *Niphad* to again re-consider the matter before him *qua* Crime No.13 of 2025.

6. Attention of the learned Additional Sessions Judge is invited to a judgment in the case of **Dr. Hema Suresh Ahuja and others Vs. The State of Maharashtra and another in Criminal Appeal No.911 of 2019** (Coram: Devendra Kumar Upadhyaya, CJ and Sarang V. Kotwal, J.) delivered on 13th March, 2024. A reference was made by the learned Single Judge of this Court (Coram: Smt. Sadhana S. Jadhav, J.) in Criminal Appeal No.911 of 2019 vide an order dated 9th August, 2019 on the following issues which were referred for a decision of larger Bench;

(1) Whether proceeding under 15A (10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 would amount to a judicial proceeding as contemplated under section 2 (i) of the Code of Criminal Procedure, 1973?

(2) Whether it would be necessary to video record any proceeding relating to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, especially when the proceedings are held in open court, as contemplated under section 327 of the Code of Criminal Procedure, 1973 and what would be the objective to be achieved?

(3) Whether hearing of a bail application under section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 is a judicial proceeding as contemplated under section 15A of the said Act?

(4) Whether section 15A (10) of the said Act could be implemented in the absence of rules framed under the Act or formulation of a scheme for implementation?”

7. Having heard learned Counsel for the parties including Dr. Birendra Saraf, Advocate General of the State, Mr. Venegavkar, Chief Public Prosecutor and Mr. Devang Vyas, then Additional Solicitor General, appearing for Union of India, in paragraph 34 to 36 following observations were made;

“34. In view of this discussion, the questions referred to us are answered as follows:

(1) The ‘proceeding’ under Section 15-A (10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 would cover all proceedings including a ‘judicial proceeding’ as contemplated under section 2 (i) of the Code of Criminal Procedure, 1973.

(2) It would be necessary to video record any proceeding relating to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 even though the proceedings are held in open court.

The objective to be achieved is effective implementation of the Amended Chapter IV-A of the Atrocities Act, which is meant to protect the rights of victims and witnesses.

(3) Hearing of a bail application under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 is a ‘judicial

proceeding’ as contemplated under section 15-A of the Atrocities Act.

(4) Section 15-A (10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be implemented in the absence of rules framed under the Act or formulation of a scheme for implementation.

35. Having answered the reference thus, the question would arise regarding the fate of the matters which are already decided wherein the proceedings were not video recorded. We are holding in this judgment that Section 15-A (10) of the Atrocities Act is mandatory. This judgment answering the reference will not affect the past proceedings which are not recorded. Effect of this judgment would be prospective.

36. It is also to be kept in mind that as of today all the Courts are not equipped with the facility of video recording. As mentioned earlier, as per Section 21 of the Atrocities Act it is the duty of the State Government to provide these facilities. Therefore, we direct the State Government to provide the facility of video recording in all the Courts in the State of Maharashtra wherever the proceedings under the Atrocities Act are to be taken up. This shall be done at the earliest. However, till the time such facilities are provided, the Courts where the facilities are not provided, may proceed without video recording the proceedings especially when the personal liberty of an accused is at stake”.

8. Copy of this order be forwarded to the Principal Secretary of Law and Judiciary, *Mantralaya* to take appropriate action against the A.P.P who was absent before the learned Additional Sessions Judge when the impugned order was passed and report the compliance. The order is also silent as regards the officer who had produced the respondents – accused before the Court on 11th January, 2025. That also needs to be inquired into. The Superintendent of Police, *Nashik* is directed to inquire as to who had produced the respondents before the Special Court on 11th January, 2025 and whether case diary was produced before the learned Special Judge.

9. The appeal is disposed of in the aforesaid terms.

10. List for compliance on 17th February, 2025.

[PRITHVIRAJ K. CHAVAN, J.]