

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

CRIMINAL APPEAL NO.988 OF 2022

- 1) Shaikh Sana Farheen Shahmir,
Age-24 years, Occu:Student,
- 2) Shahmir Shamshoddin Shaikh,
Age-46 years, Occu:Service,
- 3) Shaikh Khaja Begum Shaikh Shahmir,
Age-40 years, Occu:Household,
- 4) Shaikh Saziya Sadaf Shaikh Shahmir,
Age-19 years, Occu:Student,

All R/o-Aziz Colony, Naregaon,
Aurangabad, District-Aurangabad.

**...APPELLANTS
(Orig. accused Nos.1 to 4)**

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Kranti Chowk Police Station,
District-Aurangabad,
- 2) Deepak Ramdas Sonawane,
Age-26 years, Occu:nil,
R/o-Flat No.223, Naik Nagar,
Deolai Parisar, Aurangabad,
Taluka and District-Aurangabad.

...RESPONDENTS

...
Mr. V.D. Sapkal, Senior Counsel i/b. Mr. Patel Khizer Advocate
for Appellants.
Mr. S.D. Ghayal, A.P.P. for Respondent No.1 – State.
Mr. S.B. Deshpande Advocate for Respondent No.2.

...

WITH

CRIMINAL APPEAL NO.20 OF 2023

Deepak Ramdas Sonawane,
Age-26 years, Occu:Nil,
R/o-223, Naik Nagar,
Deolai Parisar, Aurangabad.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through City Chowk Police Station,
Aurangabad
- 2) Shaikh Sana Farheen Shahmir,
Age-24 years, Occu:Student,
- 3) Shahmir Shamshoddin Shaikh,
Age-46 years, Occu:Service,
- 4) Shaikh Khaja Begum Shaikh Shahmir,
Age-40 years, Occu:Household,
- 5) Shaikh Saziya Sadaf Shaikh Shahmir,
Age-19 years, Occu:Student,

All R/o-Aziz Colony, Naregaon,
Aurangabad, District-Aurangabad.

...RESPONDENTS

...
Mr. Swapnil B. Joshi Advocate for Appellant.
Mr. S.D. Ghayal, A.P.P. for Respondent No.1 – State.
Mr. V.D. Sapkal, Senior Counsel i/b. Mr. Patel Khizer Advocate
for Respondent Nos.2 to 5.

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**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE OF RESERVING JUDGMENT : 9th JANUARY 2023

DATE OF PRONOUNCING JUDGMENT : 24th FEBRUARY 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. **Admit.**

2. The appellants in Criminal Appeal No.988 of 2022 are the original accused Nos.1 to 4 in Crime No.299 of 2022 registered with Kranti Chowk Police Station, District-Aurangabad, which is lodged at the behest of respondent No.2 – original informant. The appellants had filed application under Section 438 of the Code of Criminal Procedure, bearing Anticipatory Bail Application Nos.2353 of 2022 before the learned Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "Atrocities Act"), Aurangabad. The said application came to be rejected on 20th December 2022. Hence the appellants have filed Criminal Appeal No.988 of 2022 under Section 14-A(2) of the Atrocities Act.

3. In Criminal Appeal No.988 of 2022, heard Mr. V.D. Sapkal, learned Senior Counsel instructed by Mr. Patel Khizer Advocate for Appellants, Mr. S.D. Ghayal, learned APP for Respondent No.1

- State and Mr. S.B. Deshpande, learned Advocate for Respondent No.2. In Criminal Appeal No.20 of 2023 heard learned Advocate Mr. Swapnil B. Joshi for the Appellant and learned APP as well as learned Senior Counsel appearing for respective respondents.

4. It has been submitted by learned Senior Counsel Mr. Sapkal instructed by Mr. Patel Khizer, learned Advocate for Appellants in Criminal Appeal No.988 of 2022 that the learned Special Judge wrongly held that taking into consideration the seriousness, sensitivity, gravity and the offence, crucial stage of investigation and as there is bar under Section 18 and 18-A of the Atrocities Act, it will not be proper to release the accused on pre-arrest bail and thereby refused to grant the anticipatory bail. The learned Special Judge failed to consider that in the First information Report (for short "FIR") itself respondent No.2 has come with the case that there was love affair between him and accused No.1 and there was exchange of the amounts in lakhs of rupees between them. According to the informant the offence had taken place between 1st March 2018 to 20th August 2022, yet he lodged the report with Kranti Chowk Police Station on 2nd December 2022. There is total suppression of the earlier complaint which he had filed with City Chowk Police Station and

when City Chowk Police Station refused to take cognizance, he approached to Kranti Chowk Police Station. One more aspect from the contents of the FIR which is required to be considered is that there is total suppression of the offence lodged with Chikalthana Police Station, Aurangabad bearing Crime No.363 of 2022 on 3rd September 2022 by accused No.1 against the informant for the offence punishable under Sections 376(2)(n), 384, 354, 354-D, 506 read with Section 34 of the Indian Penal Code. The documents regarding conversation on WhatsApp between accused No.1 and the informant would show that there was love affair between them. When there is a love affair, then there is no scope for caste or community. It also appears that the accused Nos.2 and 3, who are the parents of accused No.1, had no objection for their relationship. But informant says that they all were insisting that he should accept *Islam*, get himself converted and then perform marriage with accused No.1. The informant has stated that somewhere in March 2021 there was forcible circumcision (*Khatana*). It was impressed upon the informant that after the circumcision he has become *Muslim* and then by giving threats he was left home. But, still then the informant says that he had paid lakhs of rupees to accused No.1 and total amount which he gives, which were given by him to

accused No.1 was amounting to Rs.11,00,000/-. It is the say of the informant that thereafter also the accused persons asked him to give amount of Rs.25,00,000/- which he refused to pay and then offence under Section 354 of the Indian Penal Code was filed by accused No.1 against him with MIDC, Cidco Police Station on 29th September 2021. He says that even in the premises of the District Court, Aurangabad he was threatened. Informant further says that it was told by accused No.1 to him that she got married in January 2022 but she wants to get divorce and wants to marry him and therefore, he should give her amount. So from February to August, 2022 the informant had transferred amount of Rs.1,70,000/- in the account of accused No.1. Again the informant says that accused No.1 was threatening him and asking him to convert himself and was making demand for the amount. On 21st March 2022 it is stated that he was abused in the name of the caste. It is submitted that all these contentions would show that as per the convenience, the informant was changing his story. Rather on 21st March 2022 the informant had given affidavit stating that due to some misunderstanding the offences were registered against each other but now there is settlement and there is no dispute pending against each other. The said document has been

notarized on 21st March 2022 before the Notary Public. Even a colour of *Love-Jihad* was tried to be given to the entire story, however the police are negativating that angle. News item to that extent has also been published. The story that has been given in the FIR is concocted. Now it appears that the investigation is almost complete and only the act of filing of charge-sheet is remained. The learned trial Judge had also granted interim protection to the accused persons and all the accused have cooperated with the investigation. The offences under the Atrocities Act are prima facie not attracted taking into consideration the admitted love relationship between the informant and accused No.1. Reliance has been placed on the decision in ***Mr. ABC vs. the State of Maharashtra and another, 2021 All MR (Cri) 3664***, wherein almost on the similar facts, where there were exchanges of WhatsApp messages when it was found that there was love affair, it was held that no offence under the Atrocities Act can be said to be made out.

5. Learned Advocate Mr. Deshpande has made submissions on behalf of the informant in Criminal Appeal No.998 of 2022.

6. The informant has also filed Criminal Appeal No.20 of 2023 under Section 14-A of the Atrocities Act to challenge the order of extending interim protection by the learned Special Judge in the said Bail Application No.2353 of 2022 by order dated 20th December 2022 to original accused Nos.1 to 4. It has been submitted by learned Advocate Mr.Joshi that though the learned Special Judge rejected both the applications, yet relied on **Dr. Sameer Narayanrao Paltewar vs. the State of Maharashtra, Criminal (APL) 393 of 2021**, decided by the learned Single Judge of this Court, Bench at Nagpur on 21st August 2021. It has been submitted that when the application itself was not maintainable under Section 438 of the Code of Criminal Procedure in view of the bar under Section 18 and 18-A of the Atrocities Act, the relief or directions under Section 438(4) of the Code of Criminal Procedure could not have been extended. It has been submitted that the decision in **Prathvi Raj Chauhan vs. Union of India and others, 2020 AIR (SC) 1036**, has not been considered in proper context by the learned Special Judge.

7. It has been further submitted on behalf of the informant while supporting the reasons for rejecting the anticipatory bail application, that the offence is serious. Though there was a love

affair between the informant and accused No.1, yet accused No.1 as well as her family members i.e. her parents and sister were insisting that the informant should convert himself to *Islam* and for that purpose by asking him to come to Gulmandi, Aurangabad in March 2021, informant was forcibly taken to Naregaon, where he was confined in a room. Even accused No.2 urinated on him and entire scene has been video-graphed by accused No.1. It was to force the informant to accept *Islam*. Thereafter the informant was brought to City Chowk and taken to nearby hospital. It was told to him that he has been brought there for circumcision and if he speaks anything then he would be defamed by making his video viral. It is then stated that the informant was confined and then his circumcision has been done. Everything has been done under pressure and by applying physical force. Even huge amount has been extracted forcibly from him which is amounting to extortion and then the informant has been abused in the name of the caste. There are lodgments of various complaints even by the informant against the accused persons. In fact the informant was trying to lodge the report even since prior to 2nd December 2022 and actually he had tendered written complaints on 20th August 2022, 22nd August 2022, 2nd September 2022 etc. to the Police Commissioner,

Aurangabad, however, no action was taken. Reliance has been placed on the affidavit on behalf of respondent No.2, which is nothing but the reproduction of his FIR and other complaint applications which he has filed.

8. It has been further submitted on behalf of the informant that the accused persons have now taken help of local MLA and as regards the incident dated 20th August 2022 is concerned, the accused persons with the said MLA, his security guard and two unknown persons had abused the informant in the name of his caste, assaulted him at the gunpoint in front of the house of the MLA and it is stated that the police persons, whose help was taken by the informant immediately after the incident, in their statements under Section 161 of the Code of Criminal Procedure have disclosed the involvement of the MLA, yet he has not been arrayed as an accused nor any action for his arrest has been undertaken. Rather the informant has grievance against the investigating agency. The investigation is still incomplete and therefore, the decision taken by the learned Special Judge while rejecting the anticipatory bail application is absolutely correct, however, the protection that was granted to the accused persons deserves to be set aside.

9. Per contra, the learned APP also supported the reasons given by the learned Special Judge while rejecting the application and submitted that the contents of the FIR as well as the police papers would show that there is sufficient material to attract the provisions under the Atrocities Act. Though the accused persons had knowledge about the caste of the informant, yet they abused him, they have assaulted him. There is an attempt to convert the informant into *Islam* and for that purpose his circumcision has been done. Informant was required to undergo the medical examination and the medical opinion has been given that the informant has undergone circumcision. There are statements of the witnesses which would show that there was force on the informant from the accused persons to get himself converted. Therefore, taking into consideration the seriousness of the offence as well as the fact that abuses were given in the name of caste in a public view, the learned trial Judge has correctly held that the application is barred under Section 18 and 18-A of the Atrocities Act.

10. First of all we would like to consider Criminal Appeal No.988 of 2022, which is filed by the original accused persons. Perusal of the FIR lodged by respondent No.2 would clearly do not show any specific role to accused No.4 who is the sister of

accused No.1. Furthermore, accused No.4 is only 19 years old girl, whereas respondent No.2 is 26 years old. Why she would give abuses on the name of the caste to respondent No.2 is a question and also whatever allegations are stated to be against her are in chorus with other accused. Therefore, clearly offences under the Atrocities Act are *prima facie* not made out against accused No.4.

11. As per the FIR itself the informant is admitting his love affair with accused No.1. He has stated that they were classmates since 2018 and after the initial friendship, love developed between them. It is not the case of the informant that he has never disclosed his caste to accused No.1. He was acquainted with accused Nos.2 and 3 also, who are the parents of accused Nos. 1 and 4. He himself says that when accused No.1 was insisting that he should perform marriage with her and it should be by acceptance of Islam by him, he had told the said fact to accused Nos.2 and 3 and at that time they had given understanding to accused No.1. That means he has posed, *prima facie* a good relationship between him and accused Nos.2 and 3 at that point of time. When the initial relationship was good and the caste or the religion was not the barrier for them, then the question of raising the issue of caste or community or religion at

a later point of time will not arise. It appears that thereafter the relationship was bitter. The informant says in his FIR that demand about his conversion to Islam before the marriage was made by accused No.1 prior to March 2021 but then he does not say that he severed his relationship with accused No.1. He states about his alleged abduction plus confinement and also circumcision somewhere in March 2021. But, still the informant had not lodged immediate FIR, but then he says that thereafter also he had given money, online to accused No.1. Informant states that he has transferred more than lakhs of rupees in the account of accused No.1, still he had not severed the relationship. Each time even after the offences were registered by accused No.1 against him, he has not lodged any report. This is what is surprising here.

12. The informant further states that around February 2022 accused No.1 met him, informed him that her marriage had taken place but still she wants to get divorce from the husband and for that purpose he should help her financially. This fact also appears to have not prompted him to lodge a report. Thereafter also informant has transferred amount in the account of accused No.1 as per his own contentions and the ultimate event is said to have been taken place on 12th August 2022. No doubt the

documents produced by the informant definitely shows that he had tried to lodge report prior to 2nd December 2022 but it appears that it was not recorded by the police. But he could have definitely filed a private complaint with the appropriate Court but he has not done that. Thus even the apparent look at FIR, which is permissible in view of ***Prathvi Raj Chauhan vs. Union of India and others***, (supra), we can see that there is inordinate delay in lodging the FIR. When there is inordinate delay, it affects the story and may lose its importance. The fact will have to be observed that when the base for the relationship was the love affair, there was no barrier of caste or religion and therefore, prima facie case under the Atrocities Act cannot be said to be made out. Definitely the observations in ***Mr. ABC vs. the State of Maharashtra and another***, (supra) are helpful here. The learned Special Judge erred in stating that the application under Section 438 of the Code of Criminal Procedure filed by the present appellants was barred under Section 18 and 18-A of the Atrocities Act.

13. Another aspect also ought to be taken into consideration that on 3rd September 2022 accused No.1 had already filed FIR against respondent No.2 – informant with Chikalthana Police Station, for the offence punishable under Sections 376(2)(n),

384, 354, 354-D, 506 read with Section 34 of the Indian Penal Code, which is against the informant herein as well as his family members, wherein also present accused No.1 has alleged that she has given amount of around Rs.96,000/- to informant, online. Definitely it can be supported by a documentary evidence. This shows that there were financial transactions between the informant and accused No.1 and when such transfer of amount is made online, there is less possibility of amount being extracted, however, that depends upon the facts of the case.

14. It appears that now the colour has been tried to be given of *Love-Jihad*, but when love is accepted then there is less possibility of the person being trapped just for converting him into the other's religion. The facts of the case i.e. contents of the FIR would show that there were many opportunities to the informant for severing his relationship with accused No.1 but he has not taken that step. Merely because the boy and girl are from different religion, it cannot have a religious angle. It can be a case of pure love for each other.

15. It is to be noted that accused No.1 has filed other cases also against the informant and out of which some are prior in

time. Though the informant appears to have praying for action to be taken against accused persons since 20th October 2021 in which he has made allegations about pressurizing him to convert to *Islam* and when no action was taken by the Police Commissioner, he has filed complaint before the Judicial Magistrate First Class, Aurangabad. In the said complaint he had not made allegations about abuses in the name of the caste thereby making allegations that the offence under the Atrocities Act is also involved. If that would have been so, then the private complaint ought to have been lodged before the learned Special Judge under the Atrocities Act. However, learned Judicial Magistrate First Class (Court No.9), Aurangabad by order dated 31st December 2021, refused the prayer for sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure and kept the matter for verification of the complainant. No further document has been produced by the informant that as to whether he has challenged the said order about rejection of his application for sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure.

16. Another fact to be noted is that though these matters were going on, still on 21st March 2022 it is stated that there was

settlement and affidavit has been sworn by the informant stating that the dispute between him and accused No.1 had arisen due to misunderstanding and now there is settlement between them. No doubt the learned Advocate for the informant has his own objections for the said document, but as on today at this *prima facie* stage, the said document, which appears to be a notarized document, can be considered. Therefore, taking into consideration all these aspects, we are of the opinion that prima facie offence under the Atrocities Act are not made out and therefore, there was no bar under Section 18 or 18-A of the Atrocities Act considering the application under Section 438 of the Code of Criminal Procedure. Conclusion drawn by the learned Special Judge in that respect is wrong.

17. It can be seen from the police papers that substantial part of the investigation is over and the charge-sheet is about to be filed. Under such circumstance the physical custody of the appellants is not necessary for the purpose of investigation. Three of the appellants are ladies and that is also one of the points that is required to be considered. Another aspect to be noted is that the appellants have attended the police station, which was made part of the interim protection and it has not

been pointed out that they have misused the liberty that has been granted.

18. One more fact that is required to be considered is that initially it appears that the informant has approached the City Chowk Police Station but his FIR was not taken but then for the same set of facts and without disclosing his approach to the City Chowk Police Station, he got the FIR lodged with Kranti Chowk Police Station. This action on the part of the informant is also considered and it is one of the circumstance which prompts us to grant anticipatory bail to the appellants.

19. Much has been said about the medical evidence of the informant about circumcision. The police papers show that there is evidence of circumcision. However, the expert was unable to say as to whether the said circumcision was natural or was due to any surgical intervention. The expert was also unable to say as to whether it was done by any medical professional or in a traditional way of *Islam* by an unauthorized person. He was also unable to say as to when it would have been done. Therefore, in view of this kind of evidence, which is not supporting the contents of the FIR even at this prima facie stage, the benefit of the same will have to be given to the appellants – original

accused persons. The evidence collected i.e. statements of the witnesses is that of mainly of the parents. Now, much has also been said about the involvement of MLA at a later stage of events. No doubt there is a statement of one police person saying that he and his team had met the informant near the house of said MLA but his statement does not go further. When the involvement of the MLA is still under investigation, we would like to refrain ourselves from making any observations in respect of the same.

20. Independently, we are concluding that since no offence under the Atrocities Act is transpiring at this *prima facie* stage, there was no hurdle for the learned Special Judge to grant anticipatory bail to the appellants. Criminal Appeal No.988 of 2022, therefore, deserves to be allowed by setting aside the said impugned order passed by the learned Special Judge.

21. Now, turning towards the Appeal filed by respondent No.2 i.e. original informant, bearing Criminal Appeal No. 20 of 2023, it is of academic importance now. Informant was challenging the part of the impugned order i.e. interim protection granted earlier to the appellants – applicants was extended for three days. Reliance was placed on the decision in **Dr. Sameer**

Narayanrao Paltewar vs. the State of Maharashtra, (supra).

Perusal of the said decision would show that it was in respect of the directions that can be given under Section 438(4) of the (Maharashtra Amendment Act) Code of Criminal Procedure and it was held that said section empowers the Sessions Court to extend the interim protection operating in favour of the accused for the maximum period of three working days. However, in this case we agree to the legal principle submitted by learned Advocate Mr. Joshi for the informant that once the Court comes to the conclusion that there is bar under Section 18 or 18-A of the Atrocities Act to the application for anticipatory bail i.e. under Section 438 of the Code of Criminal Procedure, then provisions of Section 438(4) of Code of Criminal Procedure will not be applicable. However, the basic record does not show that there was an application by the prosecution for directions to the applicants – accused that the Court should direct them to remain present on the final date. If there was no such application under Section 438(4) of the Code of Criminal Procedure by the prosecution, the directions given by this Court in ***Dr. Sameer Narayanrao Paltewar vs. the State of Maharashtra***, (supra) will not be applicable. However, it is now to be seen that the said interim protection was extended by the Special Court for three

days and then thereafter this Court by order dated 23rd December 2022, granted interim protection to the appellants. It can be seen that the appellants had approached this Court well within time i.e. on 23rd December 2022. Therefore, now there is no question of setting aside the said impugned part of the order passed by the learned Special Judge. Accordingly, Criminal Appeal No. 20 of 2023 deserves to be dismissed.

22. For the reasons stated above, we proceed to pass following order:-

ORDER

(I) Criminal Appeal No.988 of 2022 stands allowed.

(II) The order passed in Anticipatory Bail Application No.2353 of 2022 dated 20th December 2022 by the learned Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of the Atrocities) Act, Aurangabad stands set aside. The said application stands allowed.

(III) Interim protection granted to the appellants in Criminal Appeal No.988 of 2022 by this Court by order dated 23rd December 2022 stands confirmed. It is clarified that in the event of arrest of the appellants in Criminal Appeal No.988 of 2022 i.e. appellant No. 1 - Shaikh Sana Farheen Shahmir, appellant No.2 - Shahmir Shamshoddin Shaikh, appellant No.3 - Shaikh Khaja

Begum Shaikh Shahmir and appellant No.4 - Shaikh Saziya Sadaf Shaikh Shahmir in connection with Crime No.299 of 2022 registered with Kranti Chowk Police Station, District-Aurangabad for the offence punishable under Sections 386, 364, 298, 324, 504, 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they be released on bail on PR Bond of Rs.15,000/- each with one solvent surety in the like amount each.

(IV) Appellant No.2 - Shahmir Shamsoddin Shaikh shall attend Kranti Chowk Police Station on every Monday between 11.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation. As Appellant Nos.1, 3 and 4 are ladies, we are asking appellant No.2 only to attend the police station.

(V) As regards appellant Nos.1, 3 and 4 in Criminal Appeal No.988 of 2022 are concerned, if their presence is required, the Investigating Officer may call them in day time only.

(VI) The appellants in Criminal Appeal No.988 of 2022 shall not tamper with the evidence of the prosecution witnesses in any manner. They shall not indulge in any criminal activity.

(VII) Criminal Appeal No.20 of 2023 stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

LATER ON :

. After the pronouncement of the order, learned Advocate for respondent No.2 in Criminal Appeal No.988 of 2022 seeks stay to the order. It will not be out of place to mention here that though the learned Special Judge had rejected the application, he had continued the interim protection for three days and thereafter within three days this Court had granted interim protection. Under such circumstance, when the liberty of the appellants has been considered and it is held that *prima facie* the offence under the Atrocities Act has not been made out, under the said circumstance, there cannot be stay. The repercussion of the stay, if granted, would be no protection to the appellants thereby allowing the investigating agency to arrest the appellants, which cannot be allowed when the Appeal has been allowed on merits. Hence, the oral prayer stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

asb/FEB23

[SMT. VIBHA KANKANWADI]
JUDGE