

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

**CRIMINAL APPEAL NO. 265 OF 2021**  
**AND**  
**CRIMINAL APPEAL NO. 266 OF 2021**

**CRIMINAL APPEAL NO. 265 OF 2021**

Bhagwan s/o Madhao Padghan  
(Complainant)

Aged about 38 years, Caste Mahar,  
R/o Sawargaon (Jire), Tq. Distt. Washim,  
Mob. - 9850183859

... **APPELLANT**

**VERSUS**

1. State of Maharashtra,  
through Police Station Officer,  
Washim (Rural)/ Sub-Divisional  
Police Officer, Washim, Tq. Distt.  
Washim.
2. Vishal s/o Natthuji Tadas (accused No.1)  
aged about : 25 years,  
Occ.- Agrl and Labour
3. Shivaji s/o Namdeo Tadas (accused No.2)  
aged about : 45 years,  
Occ.- Agrl and Labour
4. Vilas s/o Namdeo Tadas (accused No.4)  
Aged about : 43 years,  
Occ.- Agrl and Labour

No. 2 to 4 R/o Sawargaon (Jire)  
Tq. Distt. Washim.

... RESPONDENTSCRIMINAL APPEAL NO. 266 OF 2021

Bhagwan s/o Madhao Padghan  
(Complainant)

Aged about 38 years, Caste Mahar,  
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... APPELLANTVERSUS

1. State of Maharashtra,  
through Police Station Officer,  
Washim (Rural)/ Sub-Divisional  
Police Officer, Washim, Tq. Distt.  
Washim.
2. Natthuji s/o Namdeo Tadas (accused No.3)  
aged about : 50 years,  
Occ.- Agri and Labour
3. Vitthal s/o Laxman Tadas (accused No.5)  
aged about : 42 years,  
Occ.- Agri and Labour
4. Nagesh s/o Uddhav Tadas (accused No.6)  
Aged about : 43 years,  
Occ.- Agri and Labour

No. 2 to 4 R/o Sawargaon (Jire)  
Tq. Distt. Washim.

... RESPONDENTS


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Advocate Priyanka M. Mane h/f Advocate Raju Kadu, for the  
appellant.  
Ms. T.H. Udeshi, A.P.P. for Respondent no.1-State.  
Shri Harshvardhan Dhumale, Advocate for Respondent nos. 2  
to 4.

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CORAM : VINAY JOSHI, J.

DATED : 30/09/2021

JUDGMENT :

Heard. **ADMIT.**

2. By consent of learned Counsel appearing for the parties, both appeals are taken for final hearing.

3. By these appeals the informant - Bhagwan Padghan is challenging the even dated orders passed by Additional Sessions Judge, Washim in Misc. Criminal Application nos. 216/2021 and 217/2021 by which pre-arrest bail was granted. Precisely, the informant is seeking for cancellation of pre-arrest bail, in terms of Section 439(2) of the Code of Criminal Procedure.

4. At the instance of report dated 04.06.2021 lodged by the informant, crime was registered vide Crime No.201 of 2021 with the Washim Rural Police Station for the offence punishable under Sections 143, 232, 234, 336, 147, 148, 149, 294 read with 506 of the Indian Penal Code, Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC and ST Act'). Apprehending arrest in said Crime, respondent nos. 2 to 4 of both appeals have approached to the Sessions Court for grant of pre-arrest protection by two separate applications bearing Misc. Criminal Application Nos.216/2021 and 217/2021. Initially, the Special Court has protected the liberty of all respondents (accused) vide even dated ad-interim orders dated 09.06.2021. After hearing both sides, the Special Court was pleased to grant anticipatory bail to the respondents (accused) vide even dated impugned orders dated 19.06.2021.

5. Learned Counsel for the appellant (informant) has strongly criticized both impugned orders. He would submit that though the Police report specifies the role of each accused, the Special Court has ignored the same. It is argued that there are specific allegations in the First Information Report about humiliation and abuses in the name of caste. It is brought to the notice that the informant has stated in the First Information Report itself, that he belongs to scheduled caste whilst the applicant did not. According to the appellant, the caste of the informant was within the knowledge of the respondents (accused) at the time of committing offence. He would submit that the Special Court

in total disregard to the factual aspect and statutory bar created under Section 18-A of the SC and ST Act has granted pre-arrest protection, without assigning reasons, which is wholly unjustifiable.

6. Per contra, the learned Counsel for respondents (accused) justified the impugned order. He would submit that after considering the entire material, the Special Court has properly exercised judicial discretion in granting pre-arrest bail. He would submit that, the Special Court has assigned a specific reason that the dispute was political and on that basis, has granted bail. In short the respondents have fully supported both impugned orders.

7. I have gone through both interim orders dated 09.06.2021 as well as impugned final orders dated 19.06.2021 passed by the Special Court. It is surprising to note that both interim orders are converted into the final orders by only deleting a word “ad-interim” in both applications. It is apparent from both final orders that the Special Court has neither considered the reply filed by the State nor by the informant while deciding finally. Both final orders never bears a slightest reference about facts nor the reasons for grant of bail. What was in the mind of the Special Court in converting the interim orders into the final

orders by making insignificant changes is unknown.

8. It reveals that in both ad-interim and final orders, the Special Court has referred eight reported judgments with a general note. It is not clear as to which side has relied on those cases and for what purpose. It appears that though none of the parties have referred the citations, however in stereotype manner some precedents were quoted in both interim orders and again reproduced in final orders without imparting the facts and ratio of those cases. The cryptic note below the citations, would not convey the ratio of those cases. The practice of mentioning some stock citations without stating its ratio and the reason for reference shall be avoided. Basically one has to primarily consider the facts of the case and then the settled law and its applicability to the facts. The Judge cannot scuttle from its duty of assigning reasons by merely quoting number of citations without elaborating about its applicability.

9. Basically the Special Court was entertaining applications for anticipatory bail in crime registered under the SC and ST Act. The special statute itself has created an inbuilt bar to the applicability of the provisions of 438 of the Criminal Procedure Code. In the circumstances,

it is totally inappropriate to deal such applications by ignoring the bar without assigning any reasons. Section 18-A (2) of the SC and ST Act, specifically excludes the applicability of Section 438 of the Code of Criminal Procedure. Without assigning any reason about non applicability of statutory bar, the Special Court has decided both applications. In case of ***Prathvi Raj Chauhan vs. Union of India and ors. (2020) 4 SCC 727***, the Supreme Court has observed that only in cases where no *prima facie* material exists to constitute the offence under the SC and ST Act, then only anticipatory bail can be granted in appropriate circumstance, by cautiously exercising the power. While lifting statutory bar the Special Court is expected to form an opinion that no *prima facie* case is made out to constitute the offence under the SC and ST Act. In that regard, the impugned order is totally silent. The Special Court has merely stated that the dispute appears to be political and nothing else.

10. Be that as it may, since the impugned orders are cryptic, sans reason, there is nothing before this Court to reappreciate in appeal. No doubt, the Special Court has complete freedom of reaching to a particular conclusion. However, the impugned orders are the stereotype one which does not spell anything at all. One of the essential feature of

judicial process is to assign reasons for the conclusions, otherwise it is no adjudication in the eyes of law.

11. Perusal of First Information Report indicates that, it bears detail narration of alleged incident. In the circumstance, it is reasonably expected to consider the report and to express as to whether on said facts the respondents (accused ) are entitled for pre-arrest bail that too, on the context of statutory bar created under Section 18-A of the SC and ST Act.

12. It pains to state that without any efforts in both Misc. Criminal Applications, the Special Court has merely by deleting the word “ad-interim” from the interim orders, converted them into final orders. The said *modus* itself demonstrates total non-application of mind and casual approach while deciding both applications. Since, nothing is available for this Court to consider in appeal, the matter requires rehearing and fresh adjudication. After remand, the Special Court is expected to consider all above aspects and to pass reasoned order in accordance with law. The practice of converting interim orders into the final orders without application of mind, is deprecated. While deciding both applications afresh, the Special Court shall not get



influenced by this order in any manner and decide it on its own merits by keeping in mind the law laid down in the field.

13. Since both orders are not sustainable in the eyes of law, they have to be remanded for fresh hearing with a hope of passing judicial reasoned order in accordance with law. In view of that following order :

- (a) Criminal Appeal No. 265/2021 and 266/2021 stands allowed.
- (b) Impugned order dated 19.06.2021 passed in Misc. Criminal Application Nos.216/2021 and 217/2021 by the Additional Sessions Judge, Wahim, are quashed and set aside.
- (c) Misc. Criminal Application Nos. 216/2021 and 217/2021 are restored on the file of the Special Court for fresh adjudication.
- (d) Ad-interim orders dated 09.06.2021 passed in both applications shall stand continue till the final disposal of both applications, on merit.
- (e) Both parties shall appear before the Special Court on 08.10.2021.

14. Registry to inform the Special Court, accordingly.

**JUDGE**

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