

(2020) 08 BOM CK 0012
In the Bombay High Court
Case No : Criminal Appeal No. 351 Of 2020

Dada @ Anil s/o Navnath Murkute

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 10-08-2020

Acts Referred:

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1), 3(1)(r), 3(1)(s), 3(1)(xi), 3(1)(w)(i)(ii), 3(2)(v), 14(A), 18, 18(A)
Indian Penal Code, 1860 — Section 323, 324, 326, 504, 506
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2020) 08 BOM CK 0012

Hon'ble Judges : Shrikant D. Kulkarni, J

Bench : Single Bench

Advocate : Rahul R. Karpe, G.O.Wattamwar, R. G. Hange

Final Decision : Disposed Of

Judgement

1. Heard. Admit. By consent of the parties, taken up for final disposal at the admission stage.

2. Feeling aggrieved by the impugned order dated 19.06.2020 passed by the learned Additional Sessions Judge, Shrigonda in Criminal Misc.

Application No. 340/2020 whereby anticipatory bail came to be rejected, the appellant/original accused has preferred this appeal by taking aid of

section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989(hereinafter referred to as "the Atrocities Act")

for the sake of convenience).

3. Heard Mr. Rahul R. Karpe, learned Advocate for the appellant, Mr. G.O.Wattamwar, learned A.P.P. for respondent No.1/State and Mr. R. G.

Hange, learned Advocate for respondent No.2/the first informant. Perused the impugned order passed by the learned Additional Sessions Judge,

rejecting the application for anticipatory bail and police papers made available by the learned A. P. P.

4. One Rahul Ajinath Adsul, hereinafter referred to as the first informant, belongs to Hindu Mahar caste, who resides at Murkutwadi Tq. Karjat Dist.

Ahmednagar along-with his family and parents. He is a Driver employed with Rajkamal Stone Metal, Pune, however, due to Covid-19 lock down,

since last two months he is at village. According to the first informant, on 07.06.2020, at about 10.30 a.m. he, alongwith his wife, had been to Dr.

Shelke Hospital at Karjat for medical check up of his wife and while he was on the way back to his house, reached at Galandewadi Fata at about

10.55 a.m.. The appellant and one man on Tractor were talking with each other, by halting their vehicles on the road, due to which there was no ample

space on the road for the motorcycle of the first informant to proceed ahead. The first informant asked to the cyclist as to why he had obstructed the

road and give space, but no space was made available. Then the first informant took his motorcycle by the side of the road and proceeded to his house

and reached to his House at 11.00 a.m. Then the appellant alleged to have came to his house at about 11.00 a.m. and took up one wooden log and

started abusing to the first informant with reference to his caste â??Mahardeâ? and assaulted to the first informant by means of wooden log and

caused injuries. When his wife Sheetal intervened in the quarrel, the appellant alleged to have pushed her by giving kick. The appellant alleged to have

assaulted the first informant by abusing him on caste and assaulting by means of stick and thereafter threatened to kill him.

5. The first informant rushed to Karjat Police Station very day i.e on 07.06.2020 and lodged the first information report about the incident at 19.43

hours. On the basis of the first information report, the police station officer registered Crime No. 0405/2020 at Karjat Police Station for the offences

punishable under sections 324, 323, 504, 506 of the Indian Penal Code read with section 3(1)(r) and 3(1) (s) of the Atrocities Act against the appellant.

6. On perusing the police papers, it is noticed by me that the investigating officer has recovered one wooden stick from the scene of offence, however,

the vehicle used in the commission of alleged offence is yet to be seized.

7. The appellant/original accused, in apprehension of arrest in the above said crime, rushed to the Court of the Additional Sessions Judge, Shrigonda

for anticipatory bail. The learned Additional Sessions Judge, Shrigonda, after hearing both sides, was pleased to reject that application by a reasoned order dated 19.06.2020. Feeling aggrieved by the impugned order of rejection of anticipatory bail, the appellant/original accused has preferred this appeal by taking aid of Section 14-A of the Atrocities Act.

8. Mr. Karpe, the learned advocate for the appellant invited my attention to the copy of the first information report and pointed that the alleged incident is divided into two parts. One part relates to obstruction of the road while the first informant was returning to his house by his motorcycle and second part about giving alleged abuse to the first informant with reference to his caste coupled with assault by means of stick in front of the house of the first informant. The learned counsel submitted that the alleged incident had taken place between 10.55 a.m. to 11.00 a.m. in the morning and criminal law was put into motion on the very day at about 19.43 hours i.e. at 7.43 p.m. He submitted that there was delay of 10 hours in lodging of the first information report. He further vehemently submitted that there is no reference of caste of the first informant and the appellant as well in the first information report. Reference to the caste of the first informant and the appellant as well is mandatory to attract the offence under the Atrocities Act. He further submitted that the alleged incident had taken place in front of the house of the first informant. It was not a public place and not within the public view as contemplated under the provisions of the Atrocities Act. He further invited my attention to the narration of the first information report and submitted that there is no mention about the humiliation and insult of the first informant with reference to the caste at the time of alleged incident. As such no mens rea is attributed in the said incident.

9. Mr. Karpe, the learned Advocate for the appellant submitted that the appellant has been falsely implicated in this case by misusing provisions of the Atrocities Act. Such incident had never taken place. The provisions of the Atrocities Act prima facie do not attract in the case and as such, bar of Section 18 of the Atrocities Act does not come in picture so as to consider the prayer for anticipatory bail.

10. The learned counsel Mr. Karpe, after taking me through the contents of the first information report, argued that the first information report is silent about the delay in lodging of the first information report and secondly, it is silent

about humiliating the first informant with reference to his caste while giving abuses. The caste of the appellant is also not mentioned in the first information report in order to attract the provisions of the Atrocities Act.

The weapon allegedly used in the crime has been recovered from the spot of incident and nothing is to be seized. Therefore, Mr. Karpe, the learned advocate submitted that bar of section 18 of the Atrocities Act to consider the anticipatory bail application does not come in picture. The appellant is entitled to get the anticipatory bail in the above factual scenario.

11. To support his argument, Mr. Karpe, the learned Advocate place placed reliance on the following citations.

(1) 2007 All MR (Cri) 3193), Subhadra Sushil Anand & others Vs. The State of Maharashtra.

(2) 2019 All M.R.(Cri.)2983, Nitin Sampatrao Mhase and others Vs. State of Maharashtra and others.

(3) 2020 ALL MR (Cri.) 365, Vasantrao Wadgir Vs. the State of Maharashtra.

12. The learned A.P.P. has strongly opposed to allow the appeal and grant anticipatory bail to the appellant/accused by inviting my attention to the

police papers. He submitted that there are two eye witnesses to the incident, one is Sheetal Rahul Adsul who is wife of the first informant and second

Malan Adsul who is mother of the first respondent. Both the eye witnesses are supporting to the prosecution. Injury certificate of the first informant

speaks about the grievous injury caused by hard and blunt object. X-ray report shows fracture. The learned A.P.P. submitted that provisions of the

Atrocities Act prima facie attract in the case in view of the narration of the first information report and therefore, in view of the bar under section 18

of the Atrocities Act, the appeal cannot be entertained and the application for anticipatory bail needs to be dismissed by confirming the order passed

by the learned Additional Sessions Judge, Shrigonda.

13. Mr. R. G. Hange, learned advocate for the first informant/ respondent no.2 echoed the argument advanced by the learned A.P.P. He submitted

that in view of bar under section 18 of the Atrocities Act, the prayer for anticipatory bail made by the appellant is out of consideration. The provisions

of Atrocities Act prima facie attract in the present case. The appellant has abused the first informant with reference to his caste in public place in

front of his house. The appellant has used wooden log while assaulting the first

informant. The first informant has sustained head injury and therefore section 326 of the Indian Penal Code attracts coupled with section 3 (2)(v) of the Atrocities Act. According to Mr. Hange, it is not a fit case to grant anticipatory bail. He also invited my attention to the C.T. Scan report of the first informant and submitted that grievous injury has been caused to the first informant and further investigation is necessary.

14. In support of his argument, Mr. Hange the learned counsel for the first informant has placed reliance on the decision of the Apex Court in the case of Ashabai Machindra Adhagale Vs. State of Maharashtra, Criminal Appeal No. 287 of 2009 and submitted that the first information report is not an encyclopedia which must disclose all the facts in detail relating to the offence reported. The first information report cannot be faulted with only because it does not disclose the caste of the accused. The learned counsel submitted that the first information report indicates that the first informant belongs to Hindu Mahar caste and appellant has hurled abuse to the first informant with reference to his caste and bar under section 18 of the Atrocities Act rightly comes in picture.

15. Having regard to the submissions of the learned Advocate for the appellant, the learned APP and the learned counsel for the first informant, I have carefully gone through the copy of the first informant report and the police papers.

16. The alleged incident seems to have taken place on 07.06.2020 between 10.55 a.m. to 11.00 a.m. at village Murkutwadi Tq. Karjat Dist. Ahmednagar and the first information was reported on the very day at 19.42 hours (7.43 p.m.). True it is that there is delay in lodging of the first information report and there is no explanation about such delay of approximately 10 hours. But that aspect would be dealt with at the time of trial and not at this stage.

17. On careful scrutiny of the first information report, it is found that the alleged incident is encompassed in two parts, one relates to causing obstruction while the first informant was returning to his house on motorcycle with his wife and second part relates to abusing to the first informant with reference to his caste by the appellant coupled with assault by means of stick.

18. On careful scrutiny of the first information report, it is found that the first

informant alleged to have used word 'Maharde', while abusing to the first informant. The first information report is completely silent about the reference to the caste of the first informant except once in the beginning introductory line. It nowhere stated with reference to the caste to humiliate him or insult him within the public view. There are no averments to that effect to attract provisions of Atrocities Act. Merely giving abuse with word 'Maharde' is mentioned in the first information report and thereby implicated the appellant under the provisions of the Atrocities Act.

19. In case of Ashabai Machindra Adhagale (Supra), it is held by the Hon'ble Supreme Court that the first information report is not an encyclopedia which must disclose all facts relating to the offence reported. The information given disclosing the commission of a cognizable offence only sets in motion the investigating machinery, with a view to collect all necessary evidence and thereafter to take action in accordance with law.

20. In the above said case of Ashabai Machindra Adhagale, petition was moved for quashing of F. I.R. contending that provisions of provisions of

section 3(1)(xi) of the Atrocities Act do not attract in view of the absence of reference of caste of the accused in the first information report. The

Division Bench was pleased to quash the proceeding since the F.I.R. does not disclose caste of the accused. The Hon'ble Supreme Court pleased to

hold that the view taken by the High Court is not correct by observing that the first information report is not an encyclopedia. In the case at hand, the

facts are slightly different. In the present case, the appellant/accused is not seeking quashing of F.I.R. registered under the provisions of the Atrocities

Act. The appellant is seeking protection from arrest by prima facie inviting attention of this Court that necessary ingredients are lacking in the F.I.R. to

attract provisions of the Atrocities Act. The appellant is not seeking quashing of the F.I.R. In the case at hand, the F.I.R. is not only silent about the

caste of the appellant but lacks other ingredients which are important to attract provisions of the Atrocities Act.

21. This Court, in case of Vasantrao Vadgir Vs. The State of Maharashtra, reported in 2020 ALL MR (Cri)365, in para 11 of the judgment

observed thus:

11. Moreover, in order to attract the offence under Section 3(1)(r)(s) of the Act of 1989, it is essential to demonstrate that the appellants committed

the present crimes under the Act of 1989, not being members of Scheduled Caste or Scheduled Tribe. The opening sentence of Section 3(1) of the

Act, 1989, itself shows, "whoever not being a member of Scheduled Caste or Scheduled Tribe". It means that there must be prima facie

affirmation or say in the FIR/complaint that the appellants-accused are not the members of the Scheduled Caste or Scheduled Tribes. In the instant

case, there are no whisper or averment in the FIR that appellants are not the members of the Scheduled Castes or Scheduled Tribes or they are from

higher cast. There is also no reference in the FIR that the appellants-accused were aware or they had knowledge about the caste of first informant.

These are the primary ingredients of offence under Section 3(1) of the Act of 1989 for appreciation at this initial stage relating to grant of relief of pre-

arrest bail under section 438 of Cr.P.C."

22. This Court has taken same view in the case of Nitin Shantaram Mhaske & others Vs. State of Maharashtra and others, reported in 2019 ALL

MR 2983 and held in paras 10 and 11 as under:

10. In the present complaint, absolutely there are no averments to the effect that both appellants-applicants are belonging from higher caste or at least

that they are not a member of Scheduled Castes or Scheduled Tribes. There are no whisper in the FIR/complaint that both appellants had knowledge

that complainant was from Scheduled Caste or Scheduled Tribes Community. It is true that there are allegations that appellants hurled abuses to the

complainant on caste by saying "Mangte". But, bare uttering word "Mangte" would not sufficient to draw inference that appellants has

knowledge or aware about the caste of complainant, and therefore, they abused the complainant in the name of her caste to insult or humiliate her

within public view. The possibility of uttering word "Mangte" during the course of hot exchange of words may be to abuse her more filthy can not

be ruled out. All these circumstances being main and basic ingredients of Section 3(1)(w)(i)(ii) of the Act of 1989 and the absence of the same will

have an serious impact as to the ingredients to constitute offence under Act of 1989

11. In the matter-in-hand, as referred above, averments in regard to appellants that they are not the member of SC or ST community or they are

belonging from higher caste is totally absent in the alleged FIR. Moreover,

recitals of the FIR are silent to point out that the appellants had an knowledge or aware about the caste of complainant as she belongs to SC or ST community. The abuses by uttering words 'Mangte' may be towards act of abusing the complainant more filthy. Therefore, it cannot be said that allegations nurtured on behalf of complainant are sufficient to constitute the offence under Act of 1989. In the result, statutory bar under section 18 of the Act of 1989 would not set in operation to the facts and circumstances of the present case.

23. In the case of Prathvi Raj Chauhan Vs. Union of India, reported in 2020 SCC Online SC 15, 9 it is held by the Hon'ble Supreme Court that section 482 of the Criminal Procedure Code shall not apply to the cases under the Atrocities Act, however, if the complainant does not make out a prima facie case for applicability of the provisions of the Atrocities Act, the bar created by Sections 18 and 18-A shall not apply.

24. Having regard to above referred stock of citations, if the first information report in the case at hand is studied, there is no whisper in the first information report that the appellant had knowledge that the first informant belongs to Scheduled Caste or Scheduled Tribes Community. Secondly, there is no reference to the caste of the appellant. Thirdly, the appellant alleged to have hurled abuses to the first informant on caste by saying 'Maharde'. It would not be sufficient to draw inference that appellant had knowledge or he was aware about the caste of the first informant, and therefore, he abused the first informant in the name of his caste to humiliate him within public view. The possibility of uttering word 'Maharde' during the course of hot exchange of words may be to abuse him more filthy can not be ruled out. All these circumstances being main and basic ingredients of Section 3(1)(r) and (s) of the Atrocities Act and the absence of the same will have a serious impact as to the allegations to constitute offence under Act of 1989.

25. So far as other aspects regarding injury caused to the first informant and recovery of weapon are concerned, police papers show that the weapon allegedly used in the commission of offence has been recovered. So far as injury caused to the first informant is concerned, one injury is found simple and another injury is found grievous caused by hard and blunt object. The C. T. scan report shows soft tissue swelling noted in high parietal area. On

that basis, the investigating officer and the trial court/special court as well may apply appropriate sections of the Indian Penal Code. It does not cause any hurdle in considering the prayer for anticipatory bail.

26. The scrutiny of the factual aspect referred above reveals that there is no sufficient material on record to prima facie arrive at conclusion that

allegations nurtured on behalf of the prosecution are sufficient to constitute the offence under the Atrocities Act against the appellant. Therefore,

there is no impediment to entertain the appeal and consider the prayer for bail under section 438 of the Criminal Procedure Code.

27. Even though investigation seems to be in progress, there is no need of custodial interrogation of the appellant in view of the above scenario and the

averments made in the first information report. The investigation can be completed by securing presence of the appellant. With this, I conclude and

proceed to pass the following order:

ORDER

(1) The criminal appeal stands allowed.

(2) The impugned order dated 19.06.2020 passed by the learned Additional Sessions Judge, Shrigonda in Criminal Misc. Application No. 340/2020 is

hereby quashed and set aside.

(3) The application for anticipatory bail moved by the appellant under section 438 of the Criminal Procedure Code is hereby allowed.

(4) In the event of arrest of the appellant Dada @ Anil s/o Navnath Murkute in connection with Crime No. 0405/2020 registered at Karjat Police

Station for the offence punishable under sections 324, 323, 504, 506 of the Indian Penal Code read with section 3(1)(r) and 3(1)(s) of the Atrocities

Act, he shall be released on bail on his furnishing P.R. Bond of Rs. 15,000/- [Rs. Fifteen thousand only] with one solvent surety of the like amount on

the following conditions:

i. The appellant/original accused shall not tamper with the prosecution witnesses in any manner whatsoever.

ii. The appellant shall not enter into the village of the first informant i.e. Murkutwadi Tq. Karjat Dist. Ahmednagar, till conclusion of the case.

iii. The appellant shall cooperate the investigating officer to complete the investigation.

iv. The appellant shall furnish his in detail address and Mobile No. to the Investigation Officer as well as to the Sessions Court.

v. Bail before the trial court.

(5) The appeal stands disposed of in the above terms. No order as to costs.

(6) The observations made by this Court while deciding this appeal are prima facie, based upon the first information report and other related papers.

(7) The Registry to convey the order to the concerned.