

(2012) 03 BOM CK 0213

In the Bombay High Court

Case No : Criminal Application No. 1395 of 2012

Sanjay Dattu Kamble

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Penal Code, 1860 (IPC) — Section 323, 34, 504
Protection of Civil Rights Act, 1955 — Section 7(1)(d)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2013) BomCR(Cri) 73

Hon'ble Judges : Joshi A.H., J

Bench : Single Bench

Advocate : P.M. Gaikwad, for the Appellant; R.P. Phatke, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Joshi A.H., J.—Rule. Rule is made returnable forthwith and is heard by consent. Service on respondent Nos. 2 to 5 is dispensed with. This is an application u/s 439(2) of the Code of Criminal Procedure.

2. Respondent Nos. 2 to 5 were granted ad interim bail and bail order is confirmed by order, dated 17.2.2012.

3. The said order of bail is challenged and cancellation is sought by the original informant.

4. Heard the learned Advocate Shri P.M. Gaikwad for the applicant and learned A.P.P. for respondent No. 1.

5. The grounds for cancellation, as narrated in the application, are summarised as follows:-

(a) The offence is u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989; section 7(1)(d) of the Protection of Civil Rights Act; and sections 323 and 504 r/w 34 of the Indian Penal Code.

(b) The accusations that the accused persons had insulted the informant after his caste, etc. are duly described.

(c) Though the complaint does not disclose that it was in public view, witnesses have actually seen it.

(d) The learned Additional Sessions Judge held that the complaint does not contain description of the caste of the informant. This finding is erroneous, as the contents of the complaint do adequately describe mention of the caste, as it is mentioned in the printed format of the first information report.

(e) Though the say of the informant was called at the time of final order it was not called when interim order was passed and therefore the order is vitiated.

6. On perusal of the record, this Court finds that the grounds on which the learned Sessions Judge has granted bail can be sorted out and narrated as follows:-

(a) Though utterances after the caste of the applicant are made those do not in itself constitute an offence.

(b) It is not shown that the offence occurred in public view since names of the witnesses are not given.

(c) Though it is argued that there were two persons who had witnessed the incident, and whose statements are recorded by the investigating officer, a plea that two persons had witnessed the incident is not disclosed in the complaint.

(d) The source as to disclosure of the names of the witnesses who were present is not disclosed by the Investigating Officer,

7. On perusal of the first information report and spot panchanama, it reveals that the incident has occurred in house of the complainant.

8. It is seen that learned Sessions Judge, who was considering the application for regular bail exercised the discretion properly in granting the bail. It is seen from record that his judgment is not assailable on facts, although it is a matter of record that the reasons recorded by the Special Judge are scanty, inadequate and are not eloquent.

9. The satisfaction recorded by the learned Sessions Judge is not shown to be per verse or the conclusion reached without recording the reasons. In either eventuality, the impugned order is not contrary to law. No interference is called for.

Application has no merit and is dismissed. Rule is discharged.