

(2013) 01 BOM CK 0196

In the Bombay High Court

Case No : Criminal Application (Appln.) No. 30 of 2012

Suresh

APPELLANT

Vs

Vinod and Another

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 18, 3(1)(x), 3(2)(vii)

Citation : (2013) ALLMR(Cri) 1644 : (2014) 3 BomCR(Cri) 720

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : A.R. Wagh, for the Appellant; A.M. Deshmukh, Advocate for non-applicant No. 1 and Mr. S.M. Bhagde, Addl. P.P. for non-applicant No. 2, for the Respondent

Judgement

M.L. Tahaliyani, J.—Heard learned Counsel Mr. A.R. Wagh for the applicant, learned Counsel Mr. A.M. Deshmukh for non-applicant No. 1 and learned Additional Public Prosecutor Mr. S.M. Bhagde for non-applicant No. 2. The applicant is the complainant in First Information Report No. 3031/2011 of Patur Police Station, District Akola. The applicant has moved this Court for cancellation of bail granted to non-applicant No. 1 Vinod Purushottam Dhanokar by the learned Additional Sessions Judge, Akola. The First Information Report was filed by the applicant against non-applicant No. 1 for the offences punishable under Sections 3(1)(x) and 3(2)(vii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The First Information Report was filed on 19th April, 2011. However, the offence was registered on 26th May, 2011. Non-applicant No. 1 had moved the Sessions Court for grant of bail u/s 438 of the Criminal Procedure Code. The learned Additional Sessions Judge granted bail to non-applicant No. 1 on 7th June, 2011. The applicant thereafter moved the learned Sessions Judge for cancellation of bail on 2nd September, 2011. The said application was decided on 2nd December, 2011. The prayer of the applicant for

cancellation of bail was rejected by the learned Additional Sessions Judge. The applicant, therefore, filed the present application before this Court on 21st March, 2012 for cancellation of bail. It appears from the record and proceedings that the circulation was taken sometime in last week of April or first week of May, 2012. The notices were issued to non-applicant No. 1/original accused and non-applicant No. 2/State of Maharashtra.

2. During the course of arguments, learned Counsel Mr. A.R. Wagh has submitted that the order passed by the learned Additional Sessions Judge granting bail to non-applicant No. 1 was erroneous and needs to be set aside. It is submitted that in view of statutory bar u/s 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act, 1989, the learned Additional Sessions Judge could not have granted bail u/s 438 of the Criminal Procedure Code. This issue was raised before the learned Additional Sessions Judge when an application for cancellation of bail was made, which came to be decided on 2nd December, 2012. However, it appears that the learned Additional Sessions Judge has not examined this issue in detail.

3. Before considering the issue raised by learned Counsel Mr. A.R. Wagh in respect of competency of the learned Additional Sessions Judge to entertain the application u/s 438 of the Criminal Procedure Code in view of the statutory bar u/s 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, certain relevant dates are necessary to be mentioned here to examine whether the case is made out for cancellation of bail.

(i) The alleged offence was committed on 19th April, 2011 and complaint was made on the same day;

(ii) First Information Report was registered on 26th May, 2011.

(iii) Anticipatory bail was granted to non-applicant No. 1 by the learned Additional Sessions Judge on 7th June, 2011.

(iv) The applicant moved the learned Additional Sessions Judge for cancellation of bail on 2nd September, 2011.

(v) The said application was rejected on 2nd December, 2011.

(vi) The applicant filed the present application on 21st March, 2012.

(vii) The applicant took circulation of his application sometime in the last week of April or first week of May 2012.

4. It can thus be seen that more than one and a half year has already passed from the date of bail order. I am told that the chargesheet has been filed and it is pending before the learned Special Judge and that the learned Special Judge has indicated that the matter would be heard expeditiously. The learned Counsel Mr. A.M. Deshmukh for non-applicant No. 1 has submitted that the learned Special Judge is likely to frame charge on next date of hearing and that the matter could be heard and decided within four to five hearings.

5. In view of the fact that non-applicant No. 1 is on bail for more than one and half years and the trial itself is likely to be concluded within four to five hearings, I do not think that it is necessary for this Court to consider any other issue involved in the present application. However, arguments of learned Counsel Mr. A.R. Wagh that the order itself is erroneous, in my opinion, need to be addressed inasmuch as the applicant feels aggrieved by the order passed by the learned Additional Sessions Judge. Though the learned Additional Sessions Judge has not considered the bar imposed by Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, what can be seen from the order is that the learned Additional Sessions Judge was doubtful about story narrated by the applicant in the complaint. In my considered opinion, it is not necessary and not advisable at this stage to dwell much upon the merits of the case as the matter is likely to be heard by the learned Additional Sessions Judge within a few days. Suffice it to say that, in the facts and circumstances of the case, no case is made out for cancellation of bail. The application deserves to be dismissed and is accordingly dismissed.

The trial Court is directed to decide the special case as expeditiously as possible preferably within a period of thirty days from the date of receipt of this order.

Steno copy of this order be supplied to the parties as per rules.

The trial Court is directed to act upon the steno copy.