

(2019) 12 BOM CK 0025
In the Bombay High Court
Case No : Criminal Appeal No. 1084 Of 2019

Vasantrao And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 143, 147, 323, 506
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3, 3(1), 3(1)(r)(s), 14A(2), 18, 18A
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2019) 12 BOM CK 0025

Hon'ble Judges : K.K. Sonawane, J

Bench : Single Bench

Advocate : D.M. Shinde, A.A. Jagatkar, R.K. Ingole

Final Decision : Disposed Of

Judgement

1. Heard. Admit. The matter is taken up for its finality on merit with the consent of both sides.

2. This appeal takes exception to the impugned Order of rebuffing the relief of pre-arrest bail to the appellants in Crime No. 222 of 2019 registered with Kurunda Police Station, Taluka Basmathnagar, District Hingoli, under Sections 143, 147, 323 and 506 of the Indian Penal Code (IPC) and under Sections 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Act of 1989"). The appellants-accused preferred the present appeal by invoking remedy under Section 14-A(2) of Act of 1989.

3. The prosecution case in nutshell is that on 18-09-2019, complainant - Kausabai W/o Pandurang Kirwale, resident of Khambala, rushed to the Police of Kurunda Police Station, Taluka Basmathnagar, District Hingoli and filed the report that on 17-09-2019 at about 9.30 a.m. there was meeting of Gram Sabha in the village. The first informant and her husband as well as other 30 to 35 members from the vicinity attended the meeting. There were near-about 70 to 80 male

and female members, President of Dispute Resolution Committee (Tanta Mukti) Sarpanch, Gramsevak of village Khamabala all were present in the meeting. According to first informant, when discussion was going on in respect of construction of public well for drinking water in the vicinity that time the first informant as well as other members of Boudha and Adiwas Community insisted to have public well nearer to their residence. However, the appellant - Champatrao asked to construct the well in his land. There was hot exchange of words between appellants and first informant and others. The appellants - Vasantrao Khanderao and Champatrao assaulted the first informant and others by fist blows etc. and hurled casteist abuses to them. In the fight the first informant sprawled on the ground. When one Drupadabai came forward to pick up her, the appellant Deelip and Santsoh attempted to jostle her and abused by saying "Maharache Ho, Andhache Ho, Tumhi Majalet ka". According to first informant, when the persons from her locality asked the reasons for beating to them that time the appellants reprimanded them and hurled casteist abuses with intention to insult and humiliate them on their caste within a public view. They have also given threats of life to the complainant. There are allegations about assault causing hurt and intimidation to the complainant and others. Eventually, the first informant filed the report with Police Station for penal action against the appellants.

4. Pursuant to FIR, the Police of Kurunda Police Station registered the Crime bearing No. 222 of 2019 and set the penal law in motion. The appellants, apprehending their arrest, filed Criminal Bail Application bearing No. 217 of 2019 under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) before the learned Special Judge (Atrocities)/Additional Sessions Judge, Basmathnagar. The learned Additional Sessions Judge considered the circumstances on record and rejected the application of the appellants on the ground that there are allegations sufficient to make out the offence under the Act of 1989 and in view of bar under Section 18 of the Act of 1989, the appellants are not entitled for relief of anticipatory bail in this case. The impugned order of rejection of application for anticipatory bail of the appellants is the subject-matter of present appeal.

5. The learned counsel for appellants vehemently submits that the appellants are innocent of the charges pitted against them. They have not committed any crime, but they are falsely implicated in this case to wreak vengeance on account of village politics. According to learned counsel, the allegations made in the FIR are not sufficient to constitute the offence under the Act of 1989. Therefore, statutory bar under Section 18 and 18-A of the Act of 1989 would not be made applicable to preclude the appellants for availing benefit of Section 438 of the Cr.P.C., in this case. The learned counsel contends that present complaint is lodged with an ulterior motive to harass the appellants. The learned counsel for appellants submitted that the provisions of Section 3(1)(r)(s) of Act of 1989 are not attracted to the facts and circumstances of the present case. Therefore, there is no any impediment to entertain the application for relief of pre-arrest bail filed on behalf of appellants. The learned counsel further submitted that there is no

any recovery nor custodial interrogation of the appellants are essential for the sake of investigation. Therefore, impugned order rejecting application for bail by learned trial Court be set aside and appeal be allowed.

6. Learned APP for respondent - State raised the objection and contends that the Section 18-A of the Act of 1989 does not permit the Court for exercise of discretion under Section 438 of the Cr.P.C.. The first informant is from SC/ST community. The appellants hurled casteist abuses and assaulted the first informant to humiliate and insult her within a public view. The learned trial Court rejected the application for bail after considering the statutory bar under Sections 18 and 18-A of the Act of 1989. There is no error or illegality committed by learned trial Court. There is no propriety to entertain the appeal. The learned counsel for respondent No. 2 submitted that respondent No. 2-first informant filed her affidavit-in-reply on record and contended that she has filed complaint out of misunderstanding and nobody has abused on her caste. The first informant further contended that she has no objection to release the appellants on bail.

7. This Court on earlier occasion dealt with the issue of applicability of Sections 18 and 18-A of the Act of 1989 to entertain the application for pre-arrest bail filed under Section 438 of the Cr.P.C. In the proceeding of Criminal Appeal No. 787 of 2018 (Kiran Madhukar Ingle Versus State of Maharashtra and another), this Court in paragraphs No. 13 and 15 of said Judgment elaborately discussed the scope of statutory bar under Section 18 of the Act of 1989. It has also been observed that the application for anticipatory bail could be entertained only on the ground of inapplicability of provisions of Act of 1989 and it would be ascertained only on the basis of recitals of the FIR or complaint and not embarking any sort of roving enquiry as to affirm the reliability or genuineness or otherwise of the allegation made in the FIR. Paragraphs No. 13 and 15 of aforesaid judgment are reproduced as under:-

"13. It is explicitly made clear that the Court of Sessions or High Court can entertain the application for pre-arrest bail to ascertain its maintainability. The law does not permit to reject the application for anticipatory bail merely because the case has been registered under section 3 of the Act of 1989. But, it is incumbent on the part of the Court to examine as to whether the applicant at all is a fit person to be treated as accused of the crime registered under the Act of 1989. Section 18 of the Act of 1989 does not bar judicial scrutiny of the accusation made in the complaint. When the Court is held competent to enter into scrutiny of the allegations to determine whether the person can be treated as accused of commission of offence under the Act of 1989, then question would arise as to what extent the Court would be justified to examine material to determine the prima facie case against him.

14. xx xx xx xx xx xx xx

15. The exposition of law as referred above unequivocally pointer to the

inference that the application for anticipatory bail can be entertained only on the ground of inapplicability of the provisions of Act of 1989 and it would be ascertainable only on perusal of recitals of the FIR or complaint and not beyond that, because once it is gathered from the FIR that the applicant is accused of committing the offence prescribed under section 3 of the Act of 1989, a bar under section 18 of the Act of 1989 would instantly operate against him. Therefore, the Courts are not permitted to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of complainant. Moreover, further scrutiny by summoning the case diary or other material to test veracity of the allegations made in the FIR also not permissible under the law."

8. In the present appeal, the prosecution applied the provisions of Sections 3(1)(r)(s) of the Act of 1989 against the present appellants which reads as under:

"3. Punishments for offences of atrocities :-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe :-

(a) xxxxxxxx to

(q) xxxxxxxx

(r) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view ;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

Explanation : For the purposes of this clause, the expression "object" means and includes statue, photograph and portrait."

9. The minute scrutiny of the factual score of the prosecution case reveals that prima facie ingredients of penal provisions of the Act of 1989 do not match with the allegation nurtured on behalf of first informant in this case. The basic ingredients of Section 3(1)(r) (s) are that there must be "intentional insult" or "intimidation" with "intent" to humiliate a member of Scheduled Caste and Scheduled Tribe in any place within "public view". It is to be noted that the mens rea would be the decisive factor in the offence under Act of 1989. In the case of Shantabai Vs. State of Maharashtra reported in 1982 Cr.L.J. 872, it was held that merely calling a person by his caste name though may amount to insult or abuse to him, it cannot be said to be with intent to humiliate such person within a public view.

10. In the matter in hand, it has been alleged that appellants hurled abuses in the name of caste of first informant by uttering words "Maharche" or "Adiwasi", etc. If these words "Maharche" or "Adiwasi" are taken out from the conversation shown occurred in the FIR for moment then other utterances "Tumhi Majale ka", etc. perceived from the FIR though indicate "threat" or "intimidation", but it would not sufficient to draw the inference that there was any intent or mens rea to humiliate the complainant and others on their caste within public view. It is to

be noted that the entire alleged incident occurred during the course of turmoil in the meeting. In the melee, there were altercations resulted into casteist abuses to first informant and others. The allegations are found omnibus and general in nature. Therefore, prima facie, it would unsafe to draw any adverse inference against appellants for commission of crime under the Act of 1989 as alleged by the prosecution. The allegations in the FIR of threat or intimidation would be at the most constitute offence under the Indian Penal Code. In such circumstances, prima facie, the provision of Section 3(1)(r)(s) of the Act of 1989 would not be made applicable to the facts of the present matter, and consequently, would not create statutory embargo as prescribed under Sections 18 and 18-A of the Act of 1989 in this case.

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 a members of Scheduled Caste or Scheduled Tribe. The opening sentence of Section 3(1) of the Act of 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 member of Scheduled Caste or Scheduled Tribe. In the instant case, there are no whisper or averment in the FIR that appellants are not the members of Scheduled Castes or Scheduled Tribes or they are from higher caste. There is also no reference in the FIR that the appellants-accused were aware or they had an 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.

12. Taking into consideration all the circumstances discussed above, there is no impediment to conclude that in spite of bar under Section 18 of the Act of 1989, for invocation of powers under Section 438 of the Cr.P.C. it is still open to this Court to find out by looking to the recitals of FIR of the case itself, as to whether prima facie case is made out or not by the first informant against present appellants. As referred supra, the scrutiny of factual aspects reveals that there are no sufficient material available on record prima facie to arrive at the conclusion that the allegations nurtured on behalf of prosecution constitute the offence under the Act of 1989 against appellants. Therefore, there is no impediment to entertain the application filed under Section 438 of Cr.P.C. for relief of pre-arrest bail on behalf of appellants.

13. In regard to offences levelled against the appellants under Sections 143, 147, 323 and 506 of the IPC, it is to be noted that the custodial interrogation of the appellants is not essential as well as there would not be any recovery from appellants for the sake of investigation. However, the appellants has shown inclination to co-operate with Investigating Officer during the course of investigation. It is worth to mention here that in the affidavit-in-reply itself the complainant has stated that she has lodged the FIR out of misunderstanding and

now she has no objection for granting the relief of bail in favour of the appellants. In such circumstances, it would justifiable to allow the bail application filed before learned trial Court on behalf of the appellants.

14. In sequel, the appeal stands allowed. The impugned order dated 10-10-2019 passed by the learned Additional Sessions Judge/ Special Judge (Atrocities), Basmatnagar, District Hingoli, in Criminal Bail Application No. 217 of 2019 is hereby quashed and set aside. The application of the appellants filed under Section 438 of Cr.P.C. for their pre-arrest bail before the learned Sessions Court is hereby granted. The present appellants be released on bail in the event of their arrest in connection with Crime No. 222 of 2019 registered with Kurunda Police Station, Taluka Basmathnagar, District Hingoli, for the offence punishable under Sections 143, 147, 323 and 506 of the Indian Penal Code and under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on furnishing PR bond of Rs.20,000/-(Rupees Twenty Thousand) with one solvent surety of like amount each. It is stipulated that appellants-applicants shall not indulged, directly or indirectly, in any kind of activities of tampering with the evidence of the prosecution witness and co-operate the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer, accordingly.

15. The present Criminal Appeal stands disposed of in above terms. No order as to costs.