

(2022) 08 BOM CK 0029
In the Bombay High Court
Case No : Criminal Appeal No. 378 Of 2022

Vinod And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 11-08-2022

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(2)(va), 14A, 18, 18A
Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 323, 324, 504, 506

Citation : (2022) 08 BOM CK 0029

Hon'ble Judges : G. A. Sanap, J

Bench : Single Bench

Advocate : T. U. Tathod, A. A. Madiwale, P. S. Wathore

Final Decision : Allowed

Judgement

G. A. Sanap, J

1. Heard. Admit. Heard finally by consent of learned counsel for the parties.

2. In this appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC ST Act") challenge is to the order dated 09.06.2022 passed by the learned Additional Sessions Judge, Link-Court, Mangrulpir, Washim, whereby the learned Judge rejected the application made by the appellants for anticipatory bail under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.).

3. The facts leading to the appeal may be stated in brief:

On the report of the respondent No.2-Ganesh Ambore (the informant), the crime bearing No. 229 of 2022 came to be registered against the appellants for the offences punishable under Section 323, 324, 504, 506, 34 of the Indian Penal Code and Section 3(1)(r), 3(1)(s), 3(2)(va) of the SC ST Act. The appellants and respondent No.2 are neighbours. On 28.04.2022, the incident in question

occurred at about 12:15 p.m. On that day the work of construction of the house of the respondent No.2 was in progress. The appellants at that time started digging the holes for fixing the wooden poles for erecting a compound to their house. The respondent No.2 objected for the same. Therefore, the quarrel took place between them. The appellants according to the prosecution assaulted the respondent No.2 and his family members by means of wooden stick. The respondent No.2 sustained injuries. The respondent No.2 belongs to Scheduled Tribe category. It is stated that the appellants abused the respondent No.2 and his family members in filthy language. They also abused respondent No.2 and his family members in the name of their caste. On the basis of the report of the respondent No.2, the crime bearing No. 229 of 2022 came to be registered.

4. The appellants, apprehending the arrest in the crime, applied for anticipatory bail under Section 438 of the Cr.P.C. The learned Additional Sessions Judge rejected the said application.

5. The learned Advocate for the appellants submitted that perusal of the FIR would show that no offence under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the SC ST Act has been made out. The learned Advocate submitted that the appellants have been falsely implicated in this crime by invoking the stringent provisions of the SC ST Act. The learned Advocate pointed out that remaining offences registered against the appellants are bailable. The learned Advocate further submitted that considering the nature of the allegations and the nature of the incident, custodial interrogation of the appellants is not necessary. The learned Advocate submitted that since the FIR does not disclose the commission of the offence under the SC ST Act, a bar provided under Sections 18 and 18-A of the SC ST Act would not get attracted in this case. In order to substantiate his submission, the learned Advocate relied upon the following reported decisions.

i] Hitesh Verma Vs. State of Uttarakhand and another, (2020) 10 SCC 710

ii] Kiran s/o Madhukar Ingle Vs. The State of Maharashtra and Another , 2019 ALL MR (Cri) 2825

iii] Prathvi Raj Chauhan Vs. Union of India and others, (2020) 4 SCC 727.

6. The learned APP submitted that no case has been made out by the appellants to grant them anticipatory bail. The learned APP submitted that the learned Additional Session Judge has recorded the reasons for rejecting the application. The learned APP submitted that in view of the reasons recorded by the learned Additional Sessions Judge, the appeal filed by the appellants deserves to be dismissed.

7. The learned Advocate representing the respondent No.2 and assisting the learned APP submitted that in view of the mandate of Section 18 of the SC ST Act, the application for anticipatory bail under Section 438 of the Cr.P.C. is not maintainable. The learned

Advocate submitted that on the basis of the facts stated in the FIR, the offences

under the SC ST Act have been made out. The learned Advocate in support of his submission placed reliance on following two decisions.

i]Bachu Das Vs. State of Bihar and others, (2014) 3 SCC 471

ii]Manju Devi .v/s. Onkarjit Singh Ahluwalia Alias Omkarjeet Singh and Ors., (2017) 13 SCC 439

8. At the outset, it is to be noted that the offences have been registered against the appellants under Sections Section 3(1)(r), 3(1)(s), 3(2)(va) of the SC ST Act. The perusal of the provisions of Section 18 as well as newly inserted Section 18-A of the SC ST Act would show that there is a bar against the grant of anticipatory bail by invoking the provisions of Section 438 of the Cr.P.C. The moot question that needs to be addressed in this case is whether the application for anticipatory bail is maintainable or not. At this stage, it would be necessary to consider the settled legal position in the case of Hitesh Verma (cited supra). The Hon'ble Supreme Court of India considered the parameters to invoke the provision of Section 3(1)(r) of the SC ST Act. It is held that the basic ingredients of the offence are intentionally insults or intimidation with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe. The second requirement is that such act must be committed in place within public view. It is held that the offence under Section 3(1) (r) of the Act would indicate the ingredients of intentional insult and intimidation with an intent to humiliate a member of Scheduled Caste or Scheduled Tribe. It is held that all insults or intimidation of a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. It is held that the object of the Act is to improve the socio-economic conditions of the Scheduled Caste and Scheduled Tribe as they are denied number of civil rights. It is held that therefore an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliation and harassment.

9. In the case of Prathvi Raj Chauhan (cited supra) the Hon'ble Supreme Court has held that there is bar to grant anticipatory bail under Section 18 of the SC ST Act in respect of offences under the SC ST Act. It is held that however, where prima facie case is made out then the anticipatory bail can be granted in appropriate circumstances with a cautious exercise of power. It is held that Sections 18 and 18-A of the SC ST Act have no application, when prima facie case is not made out.

10. The Coordinate Bench of this Court has considered the issue of maintainability of the application in case of Kiran s/o Madhukar Ingle (cited supra). In this case after considering the judicial pronouncements, the Co-ordinate Bench has held that the application for anticipatory bail can be entertained, provided the prima facie perusal of the recitals of the FIR does not make out the basic ingredients of the offences alleged to have been committed.

11. In the case of Bachu Das (cited supra) the Hon'ble Supreme Court has held

that the bar under Section 18 of the SC ST Act would get attracted, if the offences under the SC ST Act are prima facie made out from the FIR. In this case, the Hon'ble Supreme Court observed that the offence under the SC ST Act was prima facie made out. In the case of Manju Devi (cited supra) modesty of the informant was outraged. An attempt was made to detain the informant into her quarters. The abuses in the name of caste were hurled at the informant and her family members. In this factual background, the accused was not found entitled for anticipatory bail. It is held that if the facts stated in the FIR prima facie disclosed the commission of offence then the bar under Section 18 of SC ST Act would get attracted.

12. It would be necessary to consider the applicability of the law to the facts of the case on hand. In this case, undisputedly the appellants and the respondent No.2 are the neighbours. The construction of the house of the respondent No.2 on the date of the incident was in progress. The appellants as stated in the FIR was digging holes to fix the pole for construction of the compound. The respondent No.2 raised an objection for the same. It is seen that on account of the claim on the part of the land, the dispute arose. The dispute culminated into quarrel. Perusal of the FIR would show that in the incident appellants assaulted the respondent No.2 and his family members. It is stated in the FIR that in the process of quarrel the appellants abused the respondent No.2 and his family members in the name of their caste by saying " vka/kM;k rq ;sFkqu fu?k". Perusal of the FIR would show that this is the only statement relied upon to register the offences under the SC ST Act against the appellants. It is to be noted it would not be permissible to record any finding as to the merits and demerits of the case. This statement would have to be considered as it is to decide whether the same would be sufficient to make out the offences under the SC ST Act. In my opinion, if the contents of the FIR are considered in juxtaposition with the law laid down in the case of Hitesh Verma (cited supra), in my opinion, the same would not prima facie satisfy the basic ingredients and requirements of the offences invoked in this case under the SC ST Act against the applicant. Perusal of the allegations at their face value would indicate that there was dispute between the appellants and the respondent No.2. The respondent No. 2 objected for digging of the holes to construct the compound by the appellants. The dispute while staking claim on the part of the land culminated into the quarrel. In my opinion, if the relevant allegations in the FIR are tested on the touch stone of the law laid down in the Hitesh Verma (cited supra), it would show that the bar under Sections 18 or 18-A would not get attracted in this case. The allegations made in the FIR on the caste of the respondent No.2 are not prima facie sufficient to make out an offences under the SC ST Act. In view of this position, I am of the opinion that in this case, bar under Sections 18 and 18-A of the SC ST Act would not get attracted. The application would, therefore, be maintainable.

13. The crime was registered on 28.04.2022. The investigating officer has produced before me the case diary. The perusal of the case diary would show that the investigation is almost over. The other offences under the Indian Penal

Code invoked in this case are bailable. In my opinion, detention of the appellants would not be necessary for custodial interrogation. The interrogation of the appellants can be carried out by the investigating officer.

14. It is made clear that the observations made in this order are on the basis of the prima facie analysis and consideration of contents of the FIR, for the limited purpose. The trial Court shall not get influenced by those observations while conducting the case. In the facts and circumstances, therefore, I am of the view that this is a fit case to grant anticipatory bail to the appellants, subject to the appropriate conditions. Hence, the following order.

ORDER

i] The Criminal appeal is allowed.

ii] The impugned order dated 09.06.2022 is set aside.

iii] The order passed by this Court on 23.06.2022, granting ad-interim anticipatory bail to the appellants, is hereby confirmed.

iv] The appellants shall attend the police station on every Saturday between 7 p.m. and 9 p.m. till the filing of the charge-sheet.

v] The appellants shall not tamper with the prosecution evidence and shall not pressurize the prosecution witnesses.

The Criminal Appeal stands disposed of, accordingly.