

(2019) 02 BOM CK 0076

In the Bombay High Court

Case No : Criminal Appeal No. 847, 848 Of 2018

Yuvraj S/O Mohansingh Pardeshi

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(r)(s), 14A(2), 18, 18A
Indian Penal Code, 1860 — Section 143, 147, 149, 323, 395, 504
Code of Criminal Procedure, 1973 — Section 438

Citation : (2019) 02 BOM CK 0076

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

Bench : Single Bench

Advocate : A.S. Kale, D.S. Jape, A.D. Khot

Final Decision : Disposed Off

Judgement

1. Heard. Admit. Both the appeals are taken up for final hearing on merit with the consent of both parties to appeals.

2. These appeals are filed under section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act of 1989" for the sake or brevity) on behalf of the appellants for the relief of their pre-arrest bail in crime No. 292 of 2018 registered at Nandurbar City Police Station for the offence punishable under sections 143, 147, 323, 504 read with section 149 and 395 of the Indian Penal Code (for short "IPC") as well as section 3(1)(r)(s) of the Act of 1989. Both these appeals are arising from one and the same Crime No. 292 of 2018 and rests on the identical issue of anticipatory bail in the offence of the Act of 1989, therefore, these allied appeals are dealt with simultaneously for its adjudication on merit by this common Judgment.

3. As per prosecution case, on 03-09-2018, there was celebration of "Gokulasthmi Festival" in the Nandurbar town. The events of "Dahihandi" was arranged in the area of "Andhare Chowk" and the first informant Shri Pintu

Narendra Maske and his associates had been to Andhare Chowk for participation in the celebration. When the first informant Shri Pintu Maske and his associates were prepared to participate in the event to break the pot, that time the appellants and their 10/15 accomplices picked up the quarrel with them. They hurled castiest abuses to the first informant and his associates by saying that they have no right or eligible to participate in the event to break the pot of 'Dahihandi festival'. The appellants and their accomplices advised them in sarcastic manner that they only use to celebrate Ambedkar Anniversary. The appellants and their 10/15 accomplices started assaulting them with kicks and fists. They also forcibly snatched away the golden chain of first informant worth Rs.30,000/-.

4. Pursuant to First Information Report (for short "FIR") filed by one Pintu Narendra Mhaske, the Police of Nandurbar City Police Station, Nandurbar, District Nandurbar registered the Crime No. 292 of 2018 and set the Penal law in motion against the appellants and others. I.O. arrested one co-accused Shri Sachin Pardeshi in this crime and obtained his police custody remand for investigation. The present appellants have an apprehension that they may be arrested in this crime. Therefore, apprehending their arrest at the hands of police, the appellants rushed to the Court of Additional Sessions Judge, Nandurbar and filed the applications bearing Bail Applications No. 208 and 209 of 2018 for the relief of anticipatory bail under Section 438 of Cr.P.C. However, learned Sessions Judge found reluctant to grant relief of pre-arrest bail to these appellants and rejected the applications filed under Section 438 of Cr.P.C. The impugned order of learned Additional Sessions Judge is challenged in these appeals.

5. The learned counsel for the appellants vehemently contends that the appellants are innocent of the charges levelled against them. They have not committed any crime, but they are falsely implicated in this case on account of political rivalry. The learned counsel drawn the attention of this Court towards the documents of FIR of Crime No. 288 of 2018 and submits that there was another FIR by one Ajay S/o Rajesh Tamyachekar, the associate of the appellants for assault and robbery by the first informant Pintu Mhaske of the present crime. The appellants Yuvraj was the eye-witness of the incident. Therefore, the first informant Pintu Maske in order to give counter-blow to the earlier complaint vide Crime No. 288 of 2018, filed the present false FIR after two days of the incident. He explained that the FIR did not disclose the commission of any offence under Act of 1989. The appellants are resident of Nandurbar town. There is no possibility of absconding the accused. They are ready to abide the conditions, if any, imposed on them. Their custodial interrogation is not necessary in this case. Hence, he requested to nod in favour of appellants for relief of anticipatory bail.

6. Learned APP for respondents raised objection and submits that the section 18-A of the Act of 1989 put embargo on the Court for exercising powers under section 438 of the Cr.P.C. The appellants abused the complainant on his caste within public view. The circumstances reflect from the FIR are sufficient to make

out offence under sections 3(1)(r)(s) of the Act of 1989. Therefore, application for anticipatory bail of the appellants cannot be entertained. The learned APP produced on record the relevant documents of investigation of the crime for perusal. The learned counsel for respondent No.2 also filed affidavit-in-reply on record.

7. It is to be noted that this Court in the decision of Criminal Appeal No. 787 of 2018 (Kiran Madhukar Ingle Versus State of Maharashtra and another), elaborately dealt with the issue of applicability of Section 18 of the Act of 1989 to entertain the application for pre-arrest bail under Section 438 of the Cr.P.C. and made observations in paragraph Nos. 13 and 15 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 instant appeals, the prosecution applied the provisions of section 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. After perusal of the FIR lodged against the present appellants, prima facie reveals that the ingredients of aforesaid penal provisions do not match with factual score of the present case. The basic ingredients of section 3(1)(r)(s) are that there must be "intentional insults" or "intimidation" with "intent" to humiliate a member of Scheduled Castes and Scheduled Tribes in any place within "public view". It is abundantly clear that mensrea is the decisive factor in the offence under Act of 1989. There must be "intentional insults" or "intimidation" with "intent" to humiliate member of Scheduled Caste and Scheduled Tribes in any place within "public view". In the case of Shantabai Vs. State of Maharashtra reported in 1982 Cr.L.J. 872, it has been 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.

10. In the matter-in hand, it has been alleged that the appellants and their 10-15 accomplices picked up the quarrel with complainant and his associates and hurled abuses in the name of their caste, saying that they have to celebrate only Dr. Babasaheb Ambedkar Anniversary and not "Dahihandi". These allegations in the FIR appear to be general and stray in nature and hurled by the 10-15 accused persons to the complainant and his associates. There are sweeping and omnibus allegation and no specific aspersion against each of the present appellants in regard to their overt-act or castiest abuses flung towards complainant. At this juncture, it would be profitable to make reference to the observations of the Co-ordinate Bench of this Court in the matter of Shashikant Ramhari Tambe and others Vs. State of Maharashtra reported in 2008 All MR (Cri)2132, in which it has been observed in paragraph No. 5 that:

"5. Useful reference may be made to a decision of the Supreme Court in the case of Mukesh Kumar Saini vs. State (Delhi Administration) reported in 2002 ALL M.R. (Cri.) JOURNAL 41. In the said case, it was observed that there must be specific accusation alleged against each of the accused and Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. In the present case, there is no specific accusation alleged against each of the accused. Looking to the above facts, I am inclined to grant anticipatory bail to the applicants."

11. It is also essential to take into consideration that in the present crime the FIR

came to be filed at a belated stage after about two days of the incident. There was another Crime No. 288 of 2018 registered against first informant of the present crime, namely, Pintu Mhaske and the present appellants - Yuvraj was shown as one of the eye-witnesses of the incident in the said FIR. These circumstances are, prima facie, sufficient to create flaw in the veracity of allegations nurtured against the appellants. In regard to charges of rioting and dacoity under Section 395 of the IPC, there are no incriminating circumstances prima facie on record to show the involvement and participation of appellants for committing crime of dacoity. The I.O. has also availed custodial interrogation of one of the co-accused in this case.

12. In view of nature of subject-matter and gravity of the allegations, I am of the considered opinion that, prima facie, there is no material on record to draw an inference that the appellants are the persons to be treated as an accused for an offence under the Act of 1989. As such, there is no statutory bar for this Court to consider the application of appellants filed under Section 438 of the Cr.P.C. As referred above, the custodial interrogation of the appellants is not necessary for the sake of investigation for other charges of IPC. There is also no possibility of absconding of the accused in this crime. So far as the apprehension of tampering with the evidence of prosecution is concerned, the requisite conditions would be imposed on the appellants. Therefore, there is no impediment to allow the present appeals for the relief of anticipatory bail as prayed in the present appeals.

13. In sequel, the appeals stand allowed. The impugned orders dated 28-09-2018 passed by the learned Additional Sessions Judge, Nandurbar, in Bail Applications No. 208 and 209 of 2018 are hereby quashed and set-aside. The applications of the appellants filed under Section 438 of the Cr.P.C. for their pre-arrest bail before the learned trial Court are hereby allowed. The appellants- (1) Yuvraj S/o Mohansingh Pardeshi and (2) Sudarshan S/o Krishnasingh Pardeshi, in Criminal Appeal No. 847 of 2018 and appellants- Ketan S/o Dilipsingh Raghuvanshi (Pardeshi), in Criminal Appeal No. 848 of 2018 be released on bail in the event of their arrest in connection with Crime No. 292 of 2018 registered at Nandurbar City Police Station, District Nandurbar, for the offence punishable under sections 143, 147, 323, 395, 504 read with section 149 of the IPC as well as section 3(1)(r)(s) of the Act of 1989, on furnishing PR bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one solvent surety of like amount each. It is stipulated that appellants-applicants shall not indulge, directly or indirectly, in any kind of activities of tampering with the evidence of prosecution witness. The appellants/applicants shall attend the Nandurbar City Police Station, District Nandurbar, on every Sunday in between 11.00 a.m. to 3.00 p.m. till filing of the charge-sheet and shall co-operate with the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer accordingly.

14. The present Criminal Appeals stand disposed of in above terms. No order as to costs.