

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

Criminal Appellate Jurisdiction.

Criminal Application No.1588 Of 2015.

- (1) Gopal s/o Dhondiram Kanwate,
Age : 45 Years., Occ.: Agriculturist
& Sarpanch, Gram-Panchayat,
Borgaon(Bk.),
Taluka – Chakur, District – Latur.

- (2) Vinayak s/o Govindrao Bhosale,
Age : 50 Years., Occ.: Agriculturist
& Member of Gram-Panchayat,
Borgaon(Bk.),
Taluka – Chakur, District – Latur.

Applicants.

VERSUS.

The State of Maharashtra.
Through, Police Station, Chakur,
District - Latur.

Respondent.

Appearance =>

Mr. V.D. Salunke, Advocate for the Applicants.

Mr. U.H. Bhogale a/with Mrs. Pratibha Bharad, Additional Public
Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 16th April, 2015.

Per Court :-

Present Criminal Application is filed by the Applicants for grant
of pre arrest bail, since they are apprehending their arrest in connection with
CR No. 38/2015 registered with Police Station, Chakur District - Latur for

the offences punishable under Section.s. 354(B), 323, 504, 506 of the Indian Penal Code and under Section/s 3(1)(E)(R)(S)(W) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

[2] Heard Mr. V.D. Salunke, learned counsel for the Applicants and Mr. U.H. Bhogale alongwith Mrs. Pratibha Bharad, learned Additional Public Prosecutor for the State of Maharashtra.

Mrs. Pratibha Bharad, learned Additional Public Prosecutor has an opportunity to take instructions from the Investigating Officer, who is personally present in the Court-Hall.

[3] The First Information Report is lodged on 4th February, 2015 with Police Station, Chakur District – Latur against the present Applicants and about 18 persons by First Informant –Satyabhama Satwaji Suryawanshi, who belongs to the Scheduled Caste. The First Information Report discloses that it is a written complaint. It is alleged that the first informant made a hunger strike. Since she sat on hunger strike, present Applicants and other accused persons assaulted her. That time, present Applicants uttered abusive language in the name of her caste and she was disrobed, resulting into her humiliation. With these allegations, report was lodged.

Since the report was disclosing commission of cognizable offence, the Investigating Officer immediately registered CR No. 38/2015 for the offences punishable under Section.s. 354(B), 323, 504, 506 of the Indian Penal Code and under Section/s 3(1)(E)(R)(S)(W) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989..

[4] Present Applicants approached to this court by invoking inherent jurisdiction for quashing the first information report. The said Writ Petition is registered as W.P.No. 214/2015. Initially the Division Bench of this court on 13th February, 2015 stayed the further investigation. On 10th March, 2015 the Division Bench observed that no coercive action should be taken against the present Applicants till 20th March, 2015. Since the protection given to the present Applicants was to expire on 20th March, 2015, the Applicants approached before the learned Sessions Judge on 13th March, 2015 for pre arrest bail. Their Application was registered as Criminal Bail Application No.94/2015. The learned Special Judge and Additional Sessions Judge, Latur vide order dated 20th March, 2015 rejected the said Application for pre arrest bail primarily on the ground of bar created in the Statute in view of Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, requiring the Applicants to approach to this court by filing present Application.

Prior to the stay of proceedings by this Court, the investigation papers, which are made available by the Investigating Officer shows that, swift investigation was made by the Investigating Officer. The Investigating Officer has recorded the statement of various persons, who were actually present at the time of incident.

[5] The reasons for presence of the present Applicants on the spot of incident is for removal of fencing. It appears that, two different castes of the 'Scheduled Castes' are at logger-head in respect of the fencing. A Kararnama (करारनामा) was also executed in between Gram-Panchayat and members of the Scheduled Caste. To that Kararnama, the first informant is also party.

[6] Applicant No.1 - Gopal s/o Dhondiram Kanwate is the Sarpanch of Gram-Panchayat, Borgaon; where-as accused No.2 - Vinayak s/o Govindrao Bhosale is the Member of said Gram-Panchayat. The Block Development Officer, Panchayat Samiti, Chakur issued a final show-cause-notice to the Sarpanch contending therein that, if fencing is not removed and the road is not cleared, disciplinary action will be taken. It appears that, that was the reasons for the present Applicants to remain present at the spot of occurrence, on the date of incident.

[7] All other co-accused in the Crime, in which the present Applicants are also the accused, belongs to the Scheduled Caste. They moved an Application before the learned Additional Sessions Judge, Latur for grant of bail vide Criminal Misc. Application No.57/2015. It appears that, it was Application for grant of regular bail. Said Application was allowed by the learned Special Judge & Additional Sessions Judge, Latur on 21st February, 2015. While granting bail, it is observed by the learned Additional Sessions Judge that the first informant was disrobed by the women folk, who were quarreling with the first informant.

[8] The allegations in the First Information Report, surely makes serious allegations against the present Applicants. Even for the purpose of consideration of Application for anticipatory bail, the court is not barred from having cursorily look to the material which is collected by the Investigating Officer during the course of investigation. If the material collected by the Investigating Officer shows the incriminating material against the Applicants *vis-a-vis* allegations made in the First Information Report then in that event, the bar under Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 will come into picture.

[9] The date of incident is 4th February, 2015 at 6 O'clock in the evening. The investigation papers shows that, the Investigating Officer has shown great sense of urgency in the matter. The Investigating Officer has immediately examined and recorded the statements of various witnesses, who were present at the time of incident.

[10] On 5th February, 2015 statement of Madhukar Suryawanshi, Angad Suryawanshi, Kumar Kamble, Srirang Kamble, Sau. Jamnabai Kamble, Rajkumar Sonkamble, Kondabai Kamble and others were recorded. Those statements are made available to the Court, for perusal. Those statements show that when the Applicants and persons / members of the Scheduled Caste were in a process to demarcate the spot; that time, the first informant obstructed the said work and also obstructed by saying that she will not allow the measurement. That time, various persons from the group of one caste, which is also the Scheduled Caste, were present. Their statements show that, choicest words were uttered by the first informant against them and also by the members of said Scheduled Caste against the first informant. That time, Hirkanabai and Dhondubai, who are also members of the Scheduled Caste rushed towards the first informant and free melee happened in between them and in that quarrel, specially it has been recorded in the statement of the aforesaid persons by the Investigating Officer that, Hirkanabai has disrobed the first informant. The aforesaid statements clearly shows that, though present Applicants were present there, they did not participate in the said melee. Above statements do not show that these two persons (present Applicants) were responsible for disrobing the first informant. Further statements of these witnesses do not show that, present Applicants have uttered abusive words against the first informant in the name of caste.

[11] It would not be out of place to mention that, in the investigation papers, there is one statement of Vyenkat Arjun Gulwe. This witness is a Driver. He is resident of village Borgaon(Bk.), Taluka – Chakur, District – Latur. (where incident took place.). Statement of this witness shows that the acts which are attributed to the Applicants in the First Information Report are there, in his statement. Further this witness claims that not only he is the witness to the occurrence but he has intervened the matter and separated the process.

[12] Thus, version of this person- Vyenkat would have been almost importance to the prosecution, had the statement of this witness recorded immediately. Statement of this witness is recorded on 12th February, 2015. All the statements were recorded on 5th February, 2015 and only the statement of this man is recorded on 12th February, 2015. Further in the statement itself there is nothing to show that, this man was not available in the village from 4th February, 2015 to 12th February, 2015. When this witness claims that he has not only seen the occurrence but also separated the persons engaged in the incident, it was expected from this man, to report or to disclose this fact immediately to the Investigating Officer.

[13] Though in the First Information Report, acts are alleged against the present Applicants however, those are not supported even by the members of the Scheduled Caste. On the contrary, they are very specific that present Applicants played no role and the first informant was disrobed by those two ladies, who also belongs to the Scheduled Casts and incident had occurred in between them due to exchange of abusive words between these two ladies and the first informant.

[14] Further the Writ Petition filed on behalf of present Applicants, questioning the First Information Report before the Division Bench of this Court, is still pending.

[15] The aforesaid survey of the facts lead me to reach to the conclusion that the Applicants have made out a prima face case in their favour for obtaining protection from coercive action against them, by the Investigating Officer. Apprehension of the prosecution also can be taken care of, by imposing certain conditions upon the Applicants, that leads me to pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) Applicant No.1 – Gopal s/o Dhondiram Kanwate and Applicant No.2 – Vinayak s/o Govindrao Bhosale, in the event of their arrest, shall be released on anticipatory bail on they executing P.R.Bond of Rs.25,000/- [Rs.Twenty Five Thousand.] each with one solvent surety in the like amount, in connection with CR No. 38/2015 registered with Police Station, Chakur District - Latur for the offences punishable under Section.s. 354(B), 323, 504, 506 of the Indian Penal Code and under Section/s 3(1) (E) (R) (S) (W) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(iii) The Applicants shall attend the Police Station, Chakur District - Latur twice in a week, preferably on every Monday and Thursday, between 11.00 a.m. to 2.00 p.m.

(iv) Apart from the aforesaid two days, if the Investigating Officer is of the view that presence of Applicants is further required then in that event, it is open to the Investigating Officer to call upon the Applicants to facilitate the further investigation however, for that, the Investigating Officer shall give notice in writing to the Applicants.

(v) The Applicants shall attend the Police Station, as directed above, till Charge-sheet is filed.

(vi) The Applicants shall not visit the locality where-in the first informant is residing.

(vii) The Applicants shall not intimidate or coerce any of the prosecution witnesses.

(viii) Needless to mention, any observation made in this order are only for the purpose of decision of present Application and the learned Judge of Court below, who is ultimately conducting the trial shall not get himself influenced.

(ix) With these observations, Criminal Application is allowed and same is disposed of accordingly.

(V.M. DESHPANDE, J.)