

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 5326 OF 2015

BAPURAO @ DATTATRAYA S/O SHIVAJI LIGADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Sudarshan J. Salunke.
APP for Respondents : Mr. A. R. Kale.

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CORAM : **INDIRA K. JAIN, J.**
RESERVED ON : 04th December, 2015.
PRONOUNCED ON : 08th December, 2015.

ORDER :

. Here is an application for pre-arrest bail in Crime No.214 of 2015 registered at Kaij Police Station, District Beed for the offences punishable under Sections 354, 354-A(i) of the Indian Penal Code, under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Sections 7 and 8 of the Protection of Children from Sexual Offences Act.

2 Heard at length Mr. S. J. Salunke, learned counsel for Applicant and Mr. A. R. Kale, learned APP for Respondent / State. Perused papers of investigation.

3 Prosecution case in brief is as under:

Prosecutrix a girl of 16 years age is resident of Chincholi Mali, Taluka Kaij, District Beed. She belongs to Pardhi community. On 27th August, 2015 she lodged a report alleging therein that on the same day at 09:00 am her father called a tractor from another village for cultivation of land. Her mother was cooking food in the house. Prosecutrix went behind the house to ease. That time Applicant arrived there, caught her hand and tried to take her in sugarcane crop in the field. She raised cries and then Applicant fled away from the spot. Her bangles were broken. Nearby persons including her mother rushed to the spot. She informed them and then reported the incident to Police Station.

4 According to Applicant he has been falsely implicated in the crime in view of following instances –

- (i) Applicant stood as Panch witness in Crime No.39 of 2015 registered on 16th August, 2015 at Police Station Kaij against the mother of informant for the offence punishable under Section 65 (E) of the Bombay Prohibition Act.
- (ii) On 19th February, 2015 Gram Sabha was called in the village and Applicant took up the

issue of removal of encroachment of Gairan land. On 19th February, 2015 resolution was passed in Gram Sabha.

- (iii) On 20th August, 2015 a meeting of officers of State, Police Authorities and others including the Applicant was called. In that meeting it was decided to take action against the encroachment on Gairan land and accordingly report was lodged on the basis of which offence under Section 447 read with 34 of the Indian Penal Code was registered against the family members and relatives of prosecutrix.

5 It is the contention of Applicant that being enraged with the actions of Applicant against removal of encroachment and against preparation of country made liquor family members of prosecutrix roped him in a false case though the incident narrated by prosecutrix has never occurred.

6 Learned counsel for Applicant vehemently contended that in view of false implication of Applicant bar under Section 18 of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act would not be attracted. In support of his submissions learned counsel relied upon the following authorities –

- i. Pandurang Sitaram Bhagwat Vs. State of Maharashtra¹
- ii. Shr N. B. Gungarakoppa and others Vs. State of Karnataka²
- iii. Pankaj D. Suthar Vs. State of Gujarat³
- iv. Judgments of this Court in Criminal Application No.2734 of 2012 dated 9th July, 2012, Criminal Application No.5877 of 2015 dated 6th November, 2015 and Criminal Application 5682 of 2015 dated 17th November, 2015.

7 So far as decision in AIR 2005 Supreme Court 643 is concerned, it is not directly applicable to present case as the judgment and order passed by the Bombay High Court against the judgment and order of conviction of Appellant in respect to offence of outraging the modesty of a woman was under challenge before the Honourable Apex Court.

1 AIR 2005 Supreme Court 643

2 2002 CRI. L. J. 3311 (Karnataka)

3 1992(1) Crimes 1122 (Gujarat)

8 So far as other decisions are concerned, they relate to settled proposition of law in respect of application of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Needless to state that bar to entertain an application for anticipatory bail under Section 438 of the Code of Criminal Procedure in the cases where provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act have been applied is not an absolute bar and where on scrutiny of material *prima-facie* case to implicate the Accused is not made out, Court would necessarily invoke the provisions under Section 438 of the Code of Criminal Procedure and bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act would not attract if allegations are found *per se* untrue and unreliable.

9 Learned counsel for Applicant in his extensive arguments referred to FIRs lodged against the brother, mother and relatives of prosecutrix. Learned counsel also referred to notice of hunger strike addressed by mother of prosecutrix to the Honourable President of India and submitted that prosecutrix and her family members are not simple persons and language in the correspondence speaks volume about their conduct to pressurize the Authorities.

10 In this background learned counsel for Applicant submitted that allegations in FIR need to be considered and prayed to grant anticipatory bail.

11 Per contra learned APP submitted that FIR makes out a *prima-facie* involvement of Applicant. At this stage defence raised by Accused need not be considered. Learned APP submits that in view of bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, provisions under Section 438 of the Code of Criminal Procedure cannot be invoked and application cannot be entertained.

12 It is pertinent to note that age of victim as per school leaving certificate was less than 13 and ½ years at the time of occurrence of incident. School leaving certificate was issued by Jai Bhavani Junior Primary School, Kaij. It shows her date of birth as 2nd April, 2002. Incident occurred on 27th August, 2015. FIR makes out a *prima-facie* involvement of Applicant in commission of offence outraging the modesty of a minor girl belonging to Pardhi community. She could rescue herself from the clutches of Applicant by raising alarm. No woman would falsely implicate any person by bringing her

chastity to stake. In this premise this Court finds that bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act would attract and application under Section 438 of the Code of Criminal Procedure cannot be entertained. Hence the following order –

ORDER

Criminal Application No.5326 of 2015 stands rejected.

[INDIRA K. JAIN, J.]

. At this stage learned counsel for Applicant requests for continuation of interim protection for two weeks. Considering the nature of offences and in view of the observations made here-in-above extension of interim protection rejected.

[INDIRA K. JAIN, J.]