

(1)

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

CRIMINAL APPLICATION NO.5479 OF 2015

1. Balu @ Balaji s/o Ganpat Mane,
2. Amol s/o Madhav Mudhol,
3. Sudarshan s/o Ganeshrao Mane,
4. Niranjana s/o Shrirang (real name is Shriram)
5. Rajesh s/o Champati Mane,
6. Datta s/o Narayan Gaikwad,
7. Parmeshwar s/o Maroti Thakare,
8. Prabhakar s/o Ganesh Mane,

All R/o Yelamb, Tq. Hadgaon,
District Nanded

..APPLICANTS

VERSUS

The State of Maharashtra

..RESPONDENT

Mr Santosh Narwade Patil, Advocate holding for Mr R.B. Narwade Patil,
Advocate for applicants;

Mr A.P. Basarkar, Addl. Public Prosecutor for respondent

**CORAM : N.W. SAMBRE, J.
DATE : 15th December, 2015**

ORAL ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicants seek their release on pre-arrest bail, in connection with C.R. No.74 of 2015, registered with Police Station, Hadgaon, Dist. Nanded, for offences punishable under sections 143, 147, 452, 437, 323, 504, 506 of the Indian Penal Code and section 3 (1) (x) and

(2)

(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. The incident in question is alleged to have taken place on 6th September, 2015, at about 6.00 p.m., for which offence/first information report came to be lodged on 7th September, 2015.

3. It is the case of the applicants that applicant no.6 Datta Narayan Gaikwad happens to be the real brother of one Baburao Gaikwad, who has lodged first information report for offence punishable under sections 395, 143, 147, 148, 149, 324, 323, 504 and 506 of the Indian Penal Code, pursuant to which C.R. No.75 of 2015 is registered.

4. Although applicant no.6 Datta is not named in the first information report, yet the learned Counsel would urge that vague allegations against the said applicant are made and a passing reference could be made out from the statement recorded at the end of paragraph 3 of the first information report. Learned Counsel would then urge that so as to give counter blast, the applicants herein are falsely implicated in C.R. No.74 of 2015.

5. It is no doubt true that there appears to be offence bearing C.R. No.75 of 2015, registered against real brother and cousin brother of the complainant Sanghmitra Paikrao, namely, Dinesh and Ashidmani. In view of above, false implication of the applicants, cannot be ruled out.

(3)

6. Perusal of the first information reports in C.R. Nos. 74 of 2015 and 75 of 2015 depicts that there exists a dispute in relation to the structure which is standing on the Grampanchayat land, which is admittedly without any sanction. The said structure of a religious group i.e. complainant, happened to be a bone of contention in Regular Civil Suit No. 293 of 2015.

7. One more aspect as regards disentitlement of the applicants was argued by the learned Addl. Public Prosecutor, on the ground that the one of the offences registered against them is punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and pre-arrest bail cannot be granted, in view of bar under section 18 of the said Act. Admittedly, the incident in question took place inside the house of the complainant as is alleged in the first information report. As such, the said place, in any case, cannot be given colour of a public place or the incident occurred in a full public view.

8. Apart from above, it is to be noted here that the medical certificate of Sadhana, the mother of Sanghmitra, is placed on record, which speaks of use of hard and blunt object in causing a blunt injury, which is simple in nature. If the said medical certificate is perused, same appears to be contrary to the allegations made in the first information report.

9. Apart from above, it is claimed by the complainant that she was hit from back side and she fell down and became unconscious. Perusal of the

(4)

investigation papers does not reflect any medical evidence to that effect.

10. In view of above, in my opinion, the bar under section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, would not attract in the present matter.

11. In the light of above discussion, in my opinion, it will be appropriate to grant pre-arrest bail to the applicants. I, therefore, pass following order :-

In the event of arrest of the applicants, in connection with C.R. No.74 of 2015, registered with Police Station, Hadgaon, Dist. Nanded, for offences punishable under sections 143, 147, 452, 437, 323, 504, 506 of the Indian Penal Code and section 3 (1) (x) and (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they be released on bail, on each of them furnishing P.R. Bond of Rs.25,000/- with one surety in the like amount.

The applicants shall attend the concerned police station initially for three days, between 10.00 a.m. and 12.00 a.m. from 19th to 21st December, 2015 and thereafter as and when called by the Investigating Officer.

The applicants herein to furnish an undertaking before this Court, that they shall not, in any manner, disturb the said structure as stated in claim clause of Regular Civil Suit No. 293 of 2015 and shall also maintain

(5)

harmony in the village. Such undertaking be furnished by all the applicants within a period of one week from today.

If the undertaking so furnished is flouted by the applicants, or if the applicants are involved in similar offences, the prosecution will be at liberty to bring the same to the notice of the Court, with a request for cancellation of bail granted to them.

Copy of such undertaking be also made available to the Investigating Officer for appropriate record. If the undertaking, as stated is not furnished within the time stipulated, the Court will be constrained to recall this order, if same is brought to the notice of this Court by the Investigating Officer.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

amj