

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 26 OF 2015

1 Rajendra Eknath Kamble.
2 Shailesh Rajendra Kamble.
3 Subhadra Eknath Kamble. ... Applicants.

Versus

The State of Maharashtra. ... Respondent.

Mr. Siddheshwar B. Kalel, advocate for Applicants.

Ms. Veera Shinde, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : JANUARY 27, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State. Perused the papers.

2 It is noticed that in the order dated 7/1/2015 there is an error
in paragraph-2 on page 2 the year “1989” be replaced by year “1955”.
Correction be carried out accordingly.

3 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 107 of 2014 registered at Mhaswad Police Station for offence punishable under Section 447, 323, 506 of the Indian Penal Code and Section 3(1) (10) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 and section 7(1)(D) of the Protection of Civil Rights Act, 1955.

4 It is the case of prosecution that on 12/12/2014 one Sharada Khade lodged a report at the police station alleging therein that her uncle Madhukar Khade was residing at Mhaswad. She had seen the applicant No.1 visiting her uncle's house at Mhaswad intermittently. She knows all the applicants. On 30th October, 2014, she alongwith Vasant Khade and Laxmibai Khade had been to Mhaswad. They had been to her house i.e House No. 935A, Chambhar Galli, Mhaswad. She had seen the present applicants residing in the said house. That the complainant had questioned the applicants about the same and at

that time, applicant No. 1 had disclosed that he is the owner of the house and has further stated that she has no concern with the said house. She initially approached the police station and lodged a report about the same, on the basis of which a non-cognisable case was registered. On the same day at about 2 p.m. she lodged another report at the police station alleging therein that the present applicants had insulted and humiliated her by referring to her caste when she had questioned about their entry into the said house.

5 The learned Counsel for the applicants submits that in fact, the applicants have been staying in the said house since 1970. They have been paying municipal council taxes. The tax receipts are annexed to the application. It is pertinent to note that on 5th October, 2014, the present applicant No. 2 had filed a report at the police station on the basis of which N.C. No. 725 of 2014 was registered against Harshad Khade. The applicants herein have electricity bill of the said house.

6 It prima facie appears that initially simple report was lodged on the basis of which N.C. was registered and subsequently, provisions of Atrocities Act have been added. In any case, even according to the complainant, the incident is dated 30th October, 2014. However, the first information report is lodged on 12/12/2014. The explanation offered in the first information report is that the complainant and her relatives had to proceed to Mumbai for some urgent work and therefore, there is a delay in lodging the FIR. This cannot be considered as a plausible explanation.

7 The learned APP submits that irrespective of the merits of the matter, there is bar under Section 18 of the said Act to grant pre-arrest bail in the offences under the Special Act.

8 In the present case, it prima facie appears that the allegation as far as the Atrocities Act is concerned, is a matter of afterthought.

9 Learned Counsel for the applicants submits that in fact, there is civil dispute. The complainant wanted to oust the applicants from the said house and therefore, present complaint is registered.

10 By that as it may, it does not prima facie appear that custodial interrogation of the applicants is imperative. In view of this, the applicants deserve grant of pre-arrest bail.

11 The observations made hereinabove are prima facie in nature. The same shall not be considered while deciding the application for discharge or application for quashing of FIR or at the time of trial.

12 Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) In the event of arrest, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- each and one or two sureties in the like amount.

- (iii) The applicants shall not tamper with the evidence.
- (iv) The applicants shall report to the concerned police station as and when called and cooperate with the investigating agency to the best of their capacity.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)