

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 477 OF 2015

1 Balchandra Gopal Koli
2 Ignatius Nicolas Koli. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Raja Thakare a/w. Mr. Shriram Shirsat, advocate for Applicants.

Ms. P.P. Shinde, APP for State.

Mr. Nitin Satpute, complainant in person present.

ACP Shrirang Nadgauda, IO, Kurla Division.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JUNE 9, 2015

P.C.:

1 Heard the learned counsel for the applicant, Learned APP and complainant in person.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 934 of 2014 registered at Dharavi Police Station for

offence punishable under Section 454, 457, 380 read with Section 34 of the Indian Penal Code. The complainant had lodged a report on 29th March, 2014 alleging therein that in his absence some people had demolished roof of his house and had thrown excreta in his house. There was damage to his personal property. There was theft of his valuables.

3 That specific allegations were made against 6 to 7 persons. It is pertinent to note that names of the present applicants are not reflected in the first information report. According to the complainant, he belongs to chambhar caste, which falls in the category of schedule cast. According to him, the accused persons whose names are mentioned in the first information report have humiliated him by referring to his caste in public. It is further pertinent to note that provisions of atrocities act are not reflected in the format of the first information report under section 154 of the Code Criminal Procedure, 1973.

4 The complainant who appeared in person has submitted that the accused mentioned therein had misled the police authorities by stating that they also belong to schedule caste/schedule tribe and therefore, the said provisions would not be attracted. The police had issued notice to them to produce their caste certificate. Be that as it may, it is not relevant to consider the said issue at present as the names of the present applicants are not reflected in the first information report.

5 On 20th March, 2015 supplementary statement of the complainant was recorded by the police. The complainant has stated that the applicants were developing the property without securing proper permission. The allegations, which are levelled in the first information report against co-accused are reiterated and attributed to the present applicants as well. The complainant appearing in person submits that there are eye witnesses to the incident. It is pertinent to note that the statement of the eye witnesses is also recorded

practically after one year of the alleged incident. Hence, applicants had apprehended arrest.

6 The complainant appearing in person submits that the applicants would not be entitled to pre-arrest bail due to the bar under section 18 of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act. The complainant has placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Vilas Pandurang Pawar vs. State of Maharashtra reported in LAWS(SC)-2012-9-21**. The Hon'ble Apex Court has specifically held that -

“a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.”

7 The Complainant in person also placed reliance upon judgment of the Apex Court in the case of **Shakuntala Devi v/s. Baljinder Singh reported in LAWS(SC)-2013-4-105.**

8 Prima facie, no case is made out against the accused in the FIR which was lodged on 29th March, 2014. The allegations are only reiterated in the supplementary statement. Hence, it is clear that there is delay of more than one year in levelling allegations against the present applicants. The learned Counsel appearing for the applicants submits that subsequently, case has been concocted against the present applicants and the statement of eye witnesses is also recorded practically after one year of the incident. In view of this, the applicants have prima facie made out a case for grant of pre-arrest bail.

9 It is made clear that the observations made hereinabove are prima facie in nature. The same shall not be considered at the time

hearing of application for discharge, quashing of FIR or at the time of trial.

10 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) In the event of arrest in C.R. No.134 of 2014, 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 report to the concerned Police Station as and when called and cooperate with the investigating agency to the best of their capacity.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)