

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.6 of 2015

(Shankarlal Mahadev Jaiswal

vs.

The State of Maharashtra, through P.S.O. Dharni, District Amravati)

=====

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

=====

Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : JANUARY 28, 2015.

Heard Mr. H.A. Biherani, the learned Counsel for the applicant.

The applicant is before this Court apprehending his arrest in connection with Crime No.3153/2014, registered at Dharni Police Station, District Amravati for the offences punishable under Sections 294 and 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

This Court on 13th January, 2015, while issuing notice to the non-applicant/State, referred the submission of the learned Counsel, namely initially the crime was registered only for the offence punishable under the Indian Penal Code and subsequently there was addition of allegations of committing act under the Atrocities Act. The submission of the learned Counsel

was, the report is vague and ambiguous making general allegations.

Mr. M.J. Khan, the learned A.P.P. made available the material collected by the investigating agency.

The perusal of the report shows that on 11/12/2014, the complainant, who is Upa-Sarpanch of village Hardoli reported that on the issue of water supply and disconnection of water supply, the accused persons raised a dispute with the applicant. The complainant informed them that installation of motor for water connection is an illegal act committed by the accused persons. The accused including the applicant started abusing the complainant. A reference is made to some witnesses present on the spot. The report refers to the abuses and further refers to the words '*Tum Korku Nahi Sudhrence*'.

It is interesting to note that in the report dated 11/12/2014, the complainant is silent on any act of assault or attribution of any incriminating article against the accused. The agency then recorded supplementary statement of the complainant on the next date and the statement of some witnesses on 12/12/2014 and 14/12/2014 respectively. As the investigation is in the initial stage and the detailed disclosure of the material is not required at the stage of considering the prayer for pre-arrest bail, the statements are not referred in detail. What reveals from the statements is, the report lodged

on 11/12/2014 at the instance of the complainant refers the abuses and the presence of the witnesses. The complainant is silent on the aspect of any act of assault, whereas the statement of the witnesses recorded on 12th and 14th of December, 2014 respectively developed a story of the further abuses and the accused armed with stick rushing to the complainant.

The learned A.P.P. submits that the applicant has committed an act, which would fall under the provisions of the Atrocities Act and as such the applicant cannot be protected by grant of pre-arrest bail, as there is a bar in the Act. Though there cannot be any dispute that the Atrocities Act raises a specific bar for grant of pre-arrest bail, it is settled position now that such protection can be available to such applicants, who can make out a case with the allegations against them of commission of act under the Atrocities Act is far-fetched or if it raises an element of suspicion on the version of the complainant, the applicant would be entitled for such protection. In my opinion, the present case is of such a nature, where the applicants are entitled for the protection. The material clearly reveals that on 11/12/2014, when the report is lodged, the complainant, who is Upa-Sarpanch of village, is silent on the aspect of the abuses on the caste line and on the aspect of any act of possessing incriminating article or man handling the complainant. He refers the abuses to the effect “Tum Korku Nahi Sudhrenge” and

in the statements recorded on the next day or after two days, the witnesses given a detailed version. Thus, there was a merit in the submission of the learned Counsel for the applicant that this shows an element of suspicion and a far-fetched story put up against the applicant on the backdrop of some village rivalry. The learned Counsel for the applicant has made out a case.

In the result, the application is allowed. The interim protection granted to the applicant by order of this Court dated 13/01/2015 is confirmed with conditions that the applicant to attend Dharni Police Station, District Amravati on every second and fourth Sunday of the month from 09:00 a.m. to 12:00 p.m. and maintain a dairy of his attendance duly countersigned by the Police Station Officer till filing of the Charge-sheet.

The application is disposed of as such.

Hamdast is granted.

JUDGE

**sdw*