

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

14 CRIMINAL APPLICATION NO. 4465 OF 2016

**RAMCHANDRA @ RAJU S/O
CHIMAJI SHETE**

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. N.B.Narwade, Advocate for Applicant.

Mr. S.B.Yawalkar, A.P.P. for Resp. – State.

.....

CORAM : A.M.BADAR, J.

DATE : 29th AUGUST, 2016

.....

PER COURT :

1. Applicant/accused in Crime No. 255/2016 registered at Rahuri police station, Tq. Rahuri, District Ahmednagar for the offences punishable U/ss 363,323,504,506 of the Indian Penal Code and u/s 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short, 'S.C. & S.T. Act'] by this application is seeking pre-arrest bail.

2. Heard learned counsel for the applicant. He drew my attention to the F.I.R. lodged by Rani Gopal Barde and argued that so called castists abuses are not even alleged to

have been made within public view at the public place. Learned counsel further argued that because of the dispute over the parking place, the applicant is falsely implicated with the averment that he and the co-accused had abducted the husband of the informant. It is argued that the parties were on inimical terms and the prosecution party has ransack the office of the applicant, for which Crime No. 262/2016 is registered against them.

3. Learned A.P.P. opposed the application by contending that in view of the bar of Section 18 of the S.C. & S.T. Act, the application is not maintainable. It is further argued by him that statement of the victim goes to show that after abducting him, he was assaulted and taken to various places through-out the night.

4. Perused papers of investigation. Informant Rani Barde alleged that on 02/07/2016 at about 6.00 p.m., present applicant and co-accused abducted her husband Gopal Barde and at that time they uttered that, “तुम्ही भिलटे लोक लई माजले”. Thus, according to the informant, accused persons intentionally humiliated her as well as her husband by uttering that persons from Bhil community became insolent.

5. Perusal of the statement of Gopal Barde shows that thereafter he was taken to various places by the accused persons and subsequently he was left at Khalwadi on 03/07/2016. At this juncture, it needs to be noted that in the F.I.R. of Crime No. 262/2016, the informant averred that

office of the present applicant was ransack by accused persons from Barde family.

6. Learned counsel for the applicant relied on the Judgment of the Division Bench of this Court in the case of Pradnya Pradeep Kenkare & Anr. Vs. State of Maharashtra reported in 2005 (3) Mh.L.J. - 368 to argue that the alleged crime was not committed within public view. He relied on the ratio of the said Judgment found in para No. 8. The relevant portion reads thus,

“ In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being “within public view”. The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under section 3 (1) (x) of the said Act. In the provision of law comprised under section 3 (1) (x) of the said Act. In the provision of law comprised under section 3 (1) (x) of the said Act, the word “view” refers to that of 'public' but prefixed by the expression “in any place within”. Being so, the word “public” not only relates to the location defined by the word “place” but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the

incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any one of those ingredients would not be sufficient to accuse the person of having committed an offence under section 3 (1) (x) of the said Act ”.

7. In the case in hand, the alleged offence took place in front of the house of the informant. F.I.R. alleges that 4 accused persons committed the crime in question. The averments about utterances that persons from Bhil community became insolent are attributed to the present applicant and co-accused. F.I.R. does not explain as to why the present applicant and co-accused in chorus would utter such sentence on one and the same point of time. It is seen that the averments are omnibus, making out no *prima facie* case against the present applicant under the provisions of the S.C. & S.T. Act.

8. The person who was allegedly abducted is freed, according to the informant on 03/07/2016 itself. The averments are that he suffered minor injuries in the nature of simple hurt.

9. In this view of the matter, the application needs to be entertained and, therefore, the same is allowed. Custodial interrogation of the present applicant, considering the nature of offence, is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) In the event of his arrest in Crime No. 255/2016 registered at Rahuri police station, Tq. Rahuri, District Ahmednagar for the offences punishable U/ss 363,323,504,506 of the Indian Penal Code and u/s 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, applicant Ramchandra @ Raju s/o Chimaji Shete be released on bail on executing P.R. Bond of ₹ 5,000/- [Rupees Five Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution.

(v) The applicant shall attend the concerned police station as and when reasonably called by the Investigating Officer.

10. Criminal Application stands disposed of in the above terms.

[A.M.BADAR, J.]

KNP/Cr.Apln. 4465.2016