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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.587 OF 2016

Atul Neelkanth Deshpande

.... Applicant.

V/s.

The State of Maharashtra

.... Respondent

Mr. Raja Thakare I/by Mr. Chaitanya Pendse and Mr. Amit Ghag, for the applicant.

Mr. H.J. Dedia, APP for the Respondent State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
(Vacation Court)

DATE : 27th MAY, 2016.

P.C. :

1. Not on board. Taken on today's board.
2. Leave to amend to produce certified copy of the impugned order.
3. Accordingly certified copy is allowed to be produced and taken on record.
4. This Application is preferred for quashing and setting aside the impugned order dated 26.5.2016, by the applicant, who is remanded to police custody till 30.5.2016. The said order is passed by the learned Metropolitan Magistrate, 37th Court, Esplanade, Mumbai. Consequential

prayer is made to release the applicant on bail on such terms and conditions as this Court deems fit.

5. It is submitted by learned counsel for applicant that the applicant is arraigned as accused by the respondent State in their L.A.C No.5 of 2016, registered for commission of offence punishable under Section 3(1)(viii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, (for short called as, "SC, ST Atrocities Act). The said offence is registered on the complaint of Miss. Chitra Salunke. The applicant was arrested by respondent on 26.5.2016 and was produced for remand before the learned Magistrate, who after hearing the learned APP and the original complainant Ms. Chitra Salunkhe, passed impugned order remanding the applicant to police custody till 30.5.2016.

6. It is urged that the applicant was arraigned as accused in C.R.No.291 of 2012 registered with Chembur Police Station for alleging commission of offence punishable under Sections 294, 506(2), 509 read with Section 34 of the Indian Penal Code and section 3(1)(x) of SC, ST Atrocities Act. The said crime was registered on the basis of complaint lodged by Ms. Chitra Salunke. Upon completion of investigation, chargesheet was filed against applicant. Thereafter Special Case No.16 of 2013, came to be registered and the same is pending before Special Judge, Sessions Court, Mumbai.

7. During the pendency of the said case, present applicant filed application before Special Judge alleging that original caste certificate of the complainant was not filed alongwith chargesheet and further alleged that the same has been inserted by manipulating and tampering the record of the Court. On 30th April, 2016, the learned Special Judge after hearing the parties was pleased to reject the said application observing that there was no manipulation or tampering of the record and the application was devoid of merit. On the basis of the said order passed by the learned Special Judge, complainant approached the police and as aforesaid lodged complaint against the applicant under Section 3(1)(viii) of the SC, ST Atrocities Act.

8. The complainant Ms. Chitra Salunkhe, had also filed F.I.R. making similar against Mr. Virendranath Twiari under Section 3(1) (x) of SC, ST Atrocities Act. The said Mr. Tiwari, filed Criminal Writ Petition No.2789 of 2010, seeking quashing of F.I.R. registered against him. In the said Writ Petition, this Court, was pleased to observe that , “.....the Special Judge, Greater Bombay, after detailed discussion, eventually, concluded vide judgment and order dated 16th September, 2005 that the Complainant Chitra Salunkhe does not belong to reserved category”.

9. The complainant Chitra Salunkhe, thereafter moved application for deleting portion, “complainant does not belong to reserved

category”, as mentioned in the said order. However, the said prayer was rejected by this Court, vide order dated 13th January, 2016.

10. Thus, it is submitted that when the Writ Petition No.2789 of 2010, in which it is observed that the complainant Chitra Salunkhe does not belong to reserves category, and the said observations are not yet deleted by this Court. There was absolute no case made out for registration of offence against the applicant punishable under Section 3(1)(viii) of SC & ST Atrocities Act. Despite that, the learned Magistrate has granted police custody without assigning any reason and without any grounds being made out for the same in the remand application,.

11. The learned APP Mr. Dedia, has submitted that the notice of this Petition is not issued to original complainant Ms. Chitra Salunkhe and in her absence, this Writ Petition should not be decided. However, I find that the Officer from concerned police Station is present to give instructions to learned APP and it is a question for the police to consider and argue whether they want custody of the applicant is necessary or not. It is sufficient, if learned APP is heard on the matter.

12. It is seen from the remand application which was filed before learned Magistrate that the only ground on which remand was sought was, “to find out whether the applicant accused was having any associate or companion”. Needless to say that, this can hardly be a ground for

remanding the accused to police custody. The necessity of custodial interrogation is sine-qua none for remand of any accused to police custody by curtailing his right to liberty. There is absolutely no such ground pleaded in the remand application for which custodial interrogation of the applicant can be necessitated. In such situation, the impugned order, passed by the learned Magistrate remanding the applicant to P.C.R. for 4 days from 26.05.2016 to 30.05.2016 is absolutely unwarranted, unjust and, especially having regard to the facts which are narrated above and which were brought to the notice of learned Magistrate also.

13. In view thereof, this Application is allowed. The impugned order passed by the learned Magistrate dated 26.5.2016 remanding the applicant to police custody till 30.05.2016 is quashed and set aside, and the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.15,000/- with one or two sureties in the like amount subject to condition that the applicant shall co-operate the Investigating Officer in investigation of the case and shall attend the concerned police station as and when required.

14. Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]