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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1317 OF 2016

Atul @ Manoj Shashikant Taware	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr.Rahul S. Kate for the applicant.

Ms.R.M.Gadhvi, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 3RD AUGUST, 2016

P.C. :-

1. The applicant / accused in Crime No.135/2015 for offences punishable under section 143, 147 149, 324 and 506 of the Indian Penal Code, section 3(1) (x) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 7(1)(3) of the Protection of Civil Rights Act registered with Baramati Taluka Police Station, Pune by this application is seeking pre-arrest bail.

2. Heard the learned counsel for the applicant / accused. He argued that even if the averments in the F.I.R.

are taken at its face value, then also offence under section the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act is not made out. The learned counsel further argued that rest of the offence are bailable.

3. As against this the learned APP opposed the application by submitting that the incident in question was witnessed by three witnesses and the Investigating Officer has recorded their statements. The learned APP further submitted that the applicant has criminal antecedents including one similar offence.

4. Perused the police papers made available by the learned APP. Also perused the F.I.R. in question lodged by Rahul Vilas Kharat at about 10.45 p.m. of 2nd May, 2015 with police station Baramati Taluka, Pune. Informant Rahul averred that on 1st May, 2015 at about 9.30 p.m. he had gone to Malegaon for listening to programme of Orchestra. At about 11.00 p.m. as young boys started dancing on the tune of Orchestra, he started going back to his house. According to the informant, when he was at Pune District Central Co-operative Bank, Branch Malegaon, present applicant Atul

Taware accompanied by co-accused came from behind and the present applicant gave abuses to him with intention to humiliate him at a public place in public view. According to the informant, the applicant uttered “मांगा महारांनो इकडे कशाला आई घातली तुमच्यासाठी हा तमाशा आहे काय?”. Thus, according to the informant, the present applicant has abused him by calling out his caste. Thereafter, according to the informant, accused persons assaulted him by stick and threatened him.

5. Perusal of the F.I.R. shows that the incident happened after 11.00 p.m. of 1st May, 2015. The F.I.R. does not reflect that anybody else was accompanying the informant or that there was any person at the place where the incident in question happened in late night hours. Requirement of section 3(1)(x) the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act is to the effect that incident of intentional insult or intimidation with intent to humiliate must taken place in a place within public view. The words “in any place within public view” is interpreted by this Court in the matter of ¹**Mahesh Sakharam Patole & Ors. V/s. State of Maharashtra**. In para 7 of the said judgment, it is held that:-

¹ 2009(2) Mh. L.J. 867

“ 7. A mere presence of the family members, including resident servant, in my opinion, is not sufficient to constitute an offence under section 3(1)(x) of the Act. Family members or resident-servant cannot be treated as members of public. Members of the public should either be present when the offence is committed and even if the incident was not visible, atleast the utterances or 6 remarks should be audible to the members of public to constitute an offence under the Act. For instance, if the complainant was insulted / intimidated in a closed cabin, and if the remarks were clearly audible outside the cabin and if they were heard by the public, that would also constitute an offence under section 3(1)(x) of the Act. Similarly, if no member of public was present when the accused uttered the abuses at a public place, it would not constitute an offence. Therefore, to constitute an offence under section 3(1)(x) of the Act, the incident should occur in the presence of the public or atleast the utterances should be audible to the member/s of public.”

6. Similarly, the Division Bench of this Court in matter of ²**V.P.Shetty V/s. Sr. Inspector of Police and Anr.** in para 5 held as under:-

“5. The plain reading of the complaint filed by the complainant undoubtedly prima facie discloses various

² 2005(3) Mh.L.J. 1006

accusations against the complainant by the petitioner in the name of the Scheduled Castes and Scheduled Tribes. It also prima facie discloses abuses having been uttered by the petitioner and addressed to the complainant on the ground of the complainant being a member of the Scheduled Caste. However, as rightly submitted by the learned advocate for the petitioner, the complaint nowhere discloses those accusations having been made in a place within the public view. In various decisions apart from the decision of Bai @ Laxmibai, this Court has time and again held that the expression "within public view" has specific meaning and in order to attract the provisions of law under Section 3(1)(x) of the Atrocities Act, the acts amounting to insult or humiliation to the member of Scheduled Castes or Scheduled Tribes should be visible and audible to the public. Otherwise, it would not amount to an offence under the said provision of law. Considering the same and considering the allegations in the complaint which relate to the acts by the petitioner in the closed cabin of the petitioner and in the absence of any stranger, can hardly be said to be accusations by the petitioner to the complainant "within the public view". On this count itself, the petitioner is justified in contending that there was no case for recording the F.I.R. under the provisions of law comprised under Section 3(1)(x) of the Atrocities Act."

7. In the case in hand, the F.I.R. does not show that the incident in question happened in a place within public

view or at the time of incident public was present or had heard the utterances of applicant Atul Taware.

8. The learned APP pointed out statements of Somnath Pawar, Ashish Pawar and Ajinkya Bhosale dated 3rd May, 2016. Perusal of statements of these three witnesses goes to show that they are ad-verbatim same with even comma and full stop. How these three witnesses have narrated the incident in the same fashion is a matter which requires cross-examination of the investigator as well as these witness. The F.I.R. lodged by Raul does not show that these three witnesses were present at the time of incident or that these three witnesses were accompanying him at the time of the incident.

9. For all these reasons, I am of the view that no case for the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is prima facie made out. Resultantly, custodial interrogation of the present applicant is not warranted. Considering the nature of evidence against the present applicant, his alleged criminal antecedents are irrelevant. Therefore, the order :-

- (i) In the event of arrest, the applicant / accused in Crime No.135/205 for offences punishable under section 143, 147 149, 324 and 506 of the Indian Penal Code, section 3(1)(x) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 7(1)(3) of the Protection of Civil Rights Act registered with Baramati Taluka Police Station, Pune be released on bail on his executing P.R. bond in the sum of Rs.5,000/- with one surety in the like amount;
- (ii) As a condition of this order, the applicant / accused shall attend Baramati Taluka Police Station, Pune on 14th August, 2016 and 21st August, 2016 between 11.00 a.m. to 1.00 p.m. and he shall co-operate with the Investigating Officer;
- (iii) The applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that he shall not

tamper with the evidence;

- (iv) The applicant / accused shall co-operate for expeditious disposal of the trial;
- (v) The applicant / accused shall not commit an offence similar to the offence of which he is accused or suspected of commission;
- (vi) The application is disposed of accordingly.

(A.M.BADAR, J.)