

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1565 OF 2016

1.	Mr. Rajesh Ashok Kakade	)	
2.	Mrs. Vaishali Prahlad Kale	)	
3.	Mr. Dipak Bhagwan Kakade	)	
4.	Mr. Chander Devba Dhaygude	)	
5.	Mr. Viraj Dhananjay Kakade	)	
6.	Mr. Nandkumar @ Nana Ramchandra Joshi)...		Applicants
	Verus		
	The State of Maharashtra		... Respondent

Mr. A.P.Mundargi, Senior Counsel i/b. Mr. Veerdhaval Kakade, Advocate for the applicants.

Mr. S.H.Yadav, APP, for the State.

Mr. G.H.Pinguwale, PSI, Jejuri Police Station, Pune, present.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 7th September, 2016.

P.C.

1. This is an application under Section 438 of Cr.P.C. Heard the learned Senior Counsel for the applicants and the learned APP for the Respondent-State. Perused the papers of investigation.

2. The applicants herein are apprehending their arrest in C.R. No.318 of 2016 registered at Jejuri Police Station, Pune for the offences punishable under Sections 3(1)(vi)(ix)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short Atrocities Act) and under Section 506 read with Section 34 of IPC.

3. On 27.8.2016, the complainant who happens to be the Sarpanch of Neera Gram Panchayat, lodged a report at the police station alleging therein that she was elected as Sarpanch of the said Gram Panchayat. On 30.11.2015, first meeting of the said Gram Panchayat was conducted. That in the said meeting, when the Chairman of the Village Dispute Resolution Committee was to be elected, at that time, the present applicants had addressed her by saying that since she belongs to Pardhi Tribe, she does not understand the intricacies of politics and that it is unfortunate for the village that she has been elected as a Sarpanch. It is further alleged that on 11.8.2016, she had lodged a report by post to the police station informing the police that she was asked to behave in a manner which would befit her caste. That she should beg and not get involved in politics. It is also alleged that on 14.8.2015, her father was informed that she would not continue as a Sarpanch anymore due to village politics. On the basis of the said report, Crime No. 318 of 2016 is registered at Jejuri Police Station.

4. At the outset, the learned APP submits that since the applicants are being prosecuted under the provisions of the Atrocities Act, by virtue of an embargo under Section 18 of the said Act, the applicants do not deserve

pre-arrest bail and hence, according to the learned APP, the application under Section 438 of Cr.P.C. deserves to be dismissed at the outset.

5. As against this, the learned senior counsel appearing for the applicants submits that just because there is an embargo under Section 18 of the said Act, the liberty of the individuals cannot be at stake and it would be necessary to go into the factual position in each and every case.

6. The learned Senior Counsel to substantiate his contentions, has drawn attention of this Court to the applications made by the members of the Gram Panchayat and the villagers to the Chief Executive Officer, Zilla Parishad, Pune, on 9.6.2016. In the said application, it is specifically contended that the complainant has been officiating as a Sarpanch since August 2015. That in the meeting dated 29.12.2015, the services of 15 excessive employees of the Gram Panchayat was terminated. However, on 13.5.2016, the complainant who happens to be the Sarpanch had, in exercise of her powers, disbursed the salary of the 15 persons who were already terminated. On 18.7.2016, an application was made to the Collector, Pune, by some of the applicants contending therein that the complainant has been officiating as Sarpanch since 3.8.2015, she does not

use the toilet. That she does not have her own house and further she has not given any certificate to that effect to the Block Development Officer, Panchayat Samiti which was mandatory.

7. The learned APP has submitted that on 3.12.2015, the complainant had filed an application to the PSI of Neera Police Station alleging therein that on 30.11.2015, she has been humiliated by the present applicants on the ground that she belongs to Pardhi Tribe.

8. As against this, the learned Senior Counsel submits that in fact, on 21.11.2015 itself, a representation was made to the Superintendent of Police, Pune Rural, contending therein that on 23.8.2015, the present applicant No.1 who was the ex-Sarpanch of the Village was proceeding for the meeting. He has been assaulted. One Deepak Kakade had attempted to intervene. There were also other people who had attempted to intervene and at that time, they were also assaulted. That on 24.8.2015, it was specifically contended by the villagers that the police shall not register cases under the Atrocities Act unless the facts are verified.

9. Be that as it may, in the present case, the Investigating Officer has also recorded statement of the Village Development Officer on 30.8.2016 who has specifically stated that on 30.11.2015, he in the capacity of being

Village Development Officer, was present in the meeting and has reduced the minutes of the meeting into writing. That the Sarpanch was not abused by anybody in the said meeting. That the complainant had in fact signed the minutes of the meeting. That on 14.8.2016, the complainant had offered to extend best wishes on the occasion of the Independence Day and the applicant No.1 had informed her that in the eventuality she does not extend best wishes, he would extend best wishes to the villagers. It prima facie appears that the complainant was aggrieved by the complaints made by the villagers and the office-bearers to the Collector regarding the fact that the Sarpanch was not following the mandatory rules as well as that she had abused the exercise of her powers. It is in this background allegations levelled in the FIR needs to be appreciated. Taking into consideration the circumstances in which the FIR was filed, the nature of allegation and the papers of investigation, this Court is of the opinion that the applicants deserve the grant of relief under Section 438 of Cr.P.c.

10. It is made clear that the observations made hereinabove are restricted to an application under Section 438 of Cr.P.C. and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) In the event of their arrest, the applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) The applicants shall report to the concerned police station as and when called by issuing a notice under Section 160 of Cr.P.C.

The Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)