

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

ANTICIPATORY BAIL APPLICATION NO. 1373 OF 2015

Ravindra Karthadi & Ors.

...Applicants

Versus

The State of Maharashtra

...Respondent

.....

Mr. Mahesh Jetmalani, Sr. Advocate a/w. Mr. Gunjan Mangala for the Applicants.

Mrs. Rutuja Ambekar, APP for the Respondent-State.

Mr. Silvin Kale for the Respondent No.2.

CORAM : A. S. GADKARI, J.

DATE : 9th FEBRUARY, 2016.

P. C. :

1. The applicants are apprehending their arrest in C. R. No. 246/2015 dated 24.08.2015 registered with Deonar Police Station, Mumbai under Sections 3(1), 3(6), 3(8) and 3(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The FIR is lodged by Shri Anant P. Kadam on 24.08.2015. It is, in brief, stated in the FIR that, the complainant was working with the college by name Shri Narayan Guru College of Commerce at Chembur wherein the applicant No.1 is the Principal, applicant No.2 is the Chairman of the said trust and applicant No.3 is the Secretary of the

said trust. He has further stated that earlier he had lodged FIR bearing No. 162/12 under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 18.09.2012 and after completion of investigation the police have filed the charge-sheet. The complainant has given 5 instances of the alleged atrocities committed by the applicants against him. The same are (i) he was removed from the service without any evidence and without granting an opportunity of being heard, (ii) 50% subsistence allowance has only been paid to him and the entire subsistence allowance has not been paid to him as required under the law, (iii) the applicants did not effect the documentation which was to be submitted by the complainant with the GPF Authority, (iv) the applicants stopped paying his legitimate salary and (v) the applicants did not allow the complainant to enter into the premises of the college and to visit Shri Narayan Guru Temple which in the precincts of the said college. In the premise the said FIR is lodged.

2. Heard the learned Senior Counsel appearing for the applicants, the learned counsel appearing for the original complainant and the learned APP.

3. The learned Counsel for the applicants submitted that in the earlier C.R. No. 162/12 registered at the instance of the present

complainant the applicants were arrested on 26.12.2012 and were released on bail on the same day by the Sessions Court. The trial pertaining to the said crime is at the fag end. He further submitted that the complainant filed an application for cancellation of the bail which was granted in C.R. No. 162/12 and while filing the said application below Exhibit 36 in SC/ST Special Case No.5 of 2013, has taken the following 5 grounds:

1. *The accused persons are harassing him.*
2. *Accused No.1 did not credit amount to his Bank Account so that the first informant should not get tax refund amount.*
3. *Even after order passed by Grievance Redressal Cell of Mumbai accused no. 1 and 2 misused their position and powers and are harassing them.*
4. *Though period of six months have been elapsed after filing GPF Withdrawal Form they did not take any action on the same.*
5. *Accused no.1 and 2, without permission and consent of Dy. Director of Higher Education Department, have misused their post and power granted to them.*

He further submitted that the learned Special Court by its order dated 13.01.2016 was pleased to reject the application for cancellation of bail. He further submitted that on the same or similar grounds as has been taken in the aforesaid application for

cancellation of bail, the complainant has filed the present FIR. He submitted that as a matter of fact the applicants have complied with their part of obligation as is granted under the law. He submitted that the present C. R. lodged by the informant is filed with ulterior motive and is malicious in nature. He therefore urged that the applicants may be protected by way of pre-arrest bail.

4. The learned Counsel for the original complainant vehemently opposed the present application and submitted that after the submission of final report/charge-sheet in C. R. No. 162/12, the applicants continued to harass the complainant and, therefore, the complainant has lodged the present FIR. He submitted that though the instances given in the FIR and the grounds which were taken for cancellation of bail are somewhat similar, it is the fact which prevails and, therefore, the complainant has lodged the present FIR. He submitted that the complainant has every right to enter into the precincts of the said college and to visit the said Shri Narayan Guru Temple and preventing him from doing so attracts the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He submitted that, till date the complaint has not received the fund from GPF Authority and it is only because of the non co-operation of the applicants. The learned Counsel for the complainant

submitted that, in view of the facts mentioned in the FIR, a prima face case is made out and, therefore, the application for pre-arrest bail of the applicants may be rejected. In support of his contention, the learned Counsel for the complainant relied upon a decision of the Supreme Court in the case of **Shakuntla Devi Vs. Baljinder Singh**, 2013 ALL MR (Cri) 2272 (S.C.).

5. There cannot be any quarrel about the settled legal principle under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. That Section 18 of the Act creates a bar to grant of anticipatory bail to a person against whom any offence is registered under the provisions of the said Act and, therefore, no Court shall entertain an application for anticipatory bail unless it, prima facie, finds that an offence under the Act is not made out. In the present case as stated hereinabove the complainant had on an earlier occasion lodged C.R. No. 162/12 under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and in the said case the police have already filed charge-sheet. The applicants were arrested on 26.12.2012 and were released on bail by the Special Court on the same day. The trial pertaining to the said crime is in progress. The complainant herein thereafter moved an application below Exhibit 36

in the SC/ST Case No.5/13 for cancellation of bail of the applicants herein. The complainant had taken 5 grounds for cancellation of the bail of the applicants as stated hereinabove. The said application was subsequently rejected by the trial Court on 13.01.2016. In the present crime i.e. C.R. N. 246/15 the same and similar allegations have been made against the applicants herein. Only an addition is of instance No.5 as stated in the present FIR, that the applicants are not permitting the complainant to enter into the precincts of the said college and did not allow him to visit the temple of Shri Narayan Guru. The Investigating Officer has filed an affidavit-in-reply dated 11.12.2015 opposing the present application.

6. A minute perusal of the FIR in the present case and the grounds taken by the applicant in cancellation of bail of the applicants in C. R. 162/12 disclose that the said grounds are not only similar but are nearly same. As far as ground No.5 is concerned by which it is stated that the applicants did not allow the complainant to enter into the precincts of the said college and did not also allow him to enter into the temple of Shri Narayan Guru in my view prima facie does not attract the provisions of the said Act. It is to be noted that the complainant was terminated from the service in the month of November, 2015 itself and there was no reason for the complainant

either to visit the temple or the precincts of the college after his termination from service and it appears that the said allegations are far-fetched. I am of the considered opinion that the present FIR is filed with malice at the behest of the complainant and with a view to harass the applicants who are the committee members of the said trust. In view of the same I of the considered opinion that the applicants need to be protected by way of pre-arrest bail.

7. Hence, the following order:

- (i) In the event of arrest of the applicants in C. R. No. 246 of 2015 dated 24.08.2015 registered with Deonar Police Station, Mumbai, the applicants shall be released on bail on their furnishing P. R. Bond of Rs.25,000/- each with one or two separate solvent sureties in the like amount.
- (ii) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.
- (iii) The application is allowed in the above terms.

(A. S. GADKARI, J.)