

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1612 OF 2016

1. Muknaram Mularamji PatelApplicants
2. Hemaram Chotaramji Patel

V/s.

The State of MaharashtraRespondent

Mr. Satyavrat Joshi Advocate for Applicant.

Mr. Vinod Chate APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 20, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 97 of 2016 registered at Market Yard police station, Pune for offence punishable under sections 376, 506 r/w 34 of the Indian Penal Code and section 3 (1), 3 (1) (10), 3 (1) (11), 3 (1) (12) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2) It is the case of the prosecution that on 26/06/2016, the complainant

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Ms. 'X' lodged a report at the police station alleging therein that she belongs to Mala Telgu caste. She was working as an accountant in Rajyog Sales. Original accused no. 1 Mohan was on friendly relations with her brother Rajendra. She had got acquainted with him. He had confessed his love for her. According to her, he had threatened her. That Mohan was fully aware that she belongs to scheduled caste. She had agreed to marry him. They had got married in Haridwar Marriage Bureau at Bibwewadi. She continued to stay with her parents. Since they were married, they had sexual relations. She had conceived pregnancy and according to her, thereafter, he had evaded to meet her.

3) Applicant no. 2 is the uncle of Mohan whereas applicant no. 1 is the paternal cousin of Mohan. She had been to enquire with them about the whereabouts of Mohan. At that time, they had told her that since she belongs to different caste, Mohan would not take care of her. They had also threatened her of dire consequences. That Mohan had given her a cheque of Rs. 25,000/- and that they had executed a memorandum of understanding on a non-judicial stamp paper. According to her, applicants had humiliated her by referring to her caste.

4) It is pertinent to note that the main accused Mohan has been enlarged on bail by the Additional Sessions Judge, Pune vide order dated 30/08/2016. Applicants were denied the relief of pre-arrest bail due to embargo of section 18 of the said Act.

5) Perused the F.I.R. The allegation against the applicants is that they had told the complainant that she does not belong to their caste and therefore, Mohan would not take care of her. They had told her that she belongs to scheduled caste and therefore, she cannot be given the status of the wife. It is also alleged that applicants herein have committed an offence punishable under sections 3 (1), 3 (1) (10), 3 (1) (11), 3 (1) (12) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Prima facie, upon reading the F.I.R., it is clear that the informant was not humiliated, abused in public view. She has specifically said that when they had been to drop her up to Sidhi lodge, they had told her that she belongs to scheduled caste in an auto-rickshaw.

6) The list of the scheduled caste and scheduled tribes incorporated in the Maharashtra Caste Scrutiny Manual (Seventh Edition) includes the list of scheduled castes in the State of Maharashtra. At serial no. 39 is the caste

'Mala' followed by (40) Mala Dasari (41) Mala Hannai (42) Mala Jangam (43) Mala Masti (44) Mala Sale, Netkani (45) Mala Sanyasi and therefore, it prima facie appears that 'Mala Telgu' is not scheduled caste in State of Maharashtra as per the revised list. Hence, the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 would not be applicable in the present case.

7) Taking into consideration the nature of allegations in the F.I.R., it prima facie does not appear that an offence under sections 3 (1), 3 (1) (10), 3 (1) (11), 3 (1) (12) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are carved out. The principal accused against whom the allegation under section 376 of the Indian Penal Code has been made, has been enlarged on bail. Hence, application deserves to be allowed. However, it is made clear that observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicants be enlarged on bail on furnishing P.R.

bond in the sum of Rs. 25,000/- each with one or two sureties in the like amount.

- (iii) Applicants shall report to concerned police station as and when called.
- (iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)