

Nalawade

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1757 OF 2016

Mr. Navin M. Gavate Vs. The State of Maharashtra

|                                                                                                            |                           |
|------------------------------------------------------------------------------------------------------------|---------------------------|
| Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
|------------------------------------------------------------------------------------------------------------|---------------------------|

Mr. Shirish Gupte, Sr. Advocate with Mr.V.V. Purwant for the applicant.

Mr. Deepak Thakare, APP for the Respondent-State.

CORAM :A.S.GADKARI, J.

DATE : 14th October, 2016

P.C.

1. This is an application under Section 438 of the Cr.P.C. for bail in CR No.296 of 2016 dated 21.9.2016 registered with Rabale MIDC Police Station, Navi Mumbai under Section 306, 511, 109, 504, 506 of the Indian Penal Code and under Section 3(1)(r)(s) and 3(2) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard the learned counsel for the applicant and the learned APP. Perused the documents annexed to the application.

3. The first information report is lodged by Shri. Sagar J. Sonkamble on 18.9.2016. In the first information report the first informant has elaborately narrated the earlier enmity between the applicant and the informant

arising out of alleged social activities which were conducted in the vicinity of the village Digha, Navi Mumbai. It is also stated in the first information report that at the instance of the applicant herein, the police had first applied the provisions of Cr.P.C. and Bombay Police Act for initiating proceedings for of externment against him. That, subsequently at the instance of the applicant herein the first informant was removed from the committee of Azad Mitra Mandal. In the first information report it is stated that on 5.9.2016 there was a Ganesh festival and as nobody called the first informant he did not go to the said religious ceremony conducted by the said Mandal. After 7 to 8 days from 5.9.2016 (i.e. on or about 13.9.2015) when the complainant was proceeding from Vishunagar to Digha the applicant obstructed the way of the first informant on the public road and hurled abuses to him on his caste. The applicant also threatened the complainant of serious consequences. It is further stated that the applicant also abused the complainant in filthy language and went away from his four wheeler vehicle. The first informant has further stated that he contacted the police about the same but the police did not initiate any action against the applicant. That due to the consistent harassment meted out to him by the applicant, on 15.9.2016 in the after noon at about 2.30p.m., with a view to commit suicide he consumed phenyle. Prior to committing the suicide the complainant also wrote a suicide note. The complainant

was thereafter admitted to the hospital and when he was in hospital his first information report was recorded by the police. In the premise, the first information report is lodged.

4. The learned Senior counsel appearing for the applicant submitted that the application of Section 3(1)(r) (s) and 3(2) of the SCST (Prevention of Atrocities) Act 1889 is misplaced as the alleged act attributed to the applicant was not within the public view. He further submitted that there is no question of fabricating any evidence or giving false evidence against the complainant in any crime and therefore, the application of Section 3(2) of the said Act is not tenable. The learned counsel further submitted that as a matter of fact when certain objectionable matter was being circulated on social media against the applicant, he immediately made a written complaint to the Commissioner of Police on 16.9.2016 thereby requesting it to investigate the same. He further submitted that the political enmity between the applicant and the complainant is well known and only with a view to implead him in a cognizable and non bailable offence the complainant has written the said note prior to attempting to commit suicide on 15.9.2016. He submitted that the contents of the said note may be exaggerated version of the concerned person i.e. complainant who has written it. He submitted that the applicant is the sitting corporator of the Corporation having social status in the

society. He submitted that as the offence under Section 306 of I.P.C. is not completed, therefore the alleged suicide note written by the complainant need not be taken into consideration as it is now either a statement under Section 154 or section 161 of the Cr.P.C., of the informant. He submitted that as there is nothing to recover at the instance of the applicant, the custodial interrogation of the applicant is not necessary. He therefore, prayed that the applicant may be granted pre-arrest bail.

5. Per contra, the learned APP opposed the application. He submitted that under Section 18 of the said Act, there is a bar for an application u/s. 438 of the Cr.P.C. He submitted that as per the contents of the FIR a clear case under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities ) Act is made out. He produced before me the police report submitted by the Assistant Commissioner of Police Vashi Division, thereby placing on record the fact that the applicant is also involved in three other crimes and when he was on bail, he has committed the present crime. He submitted that the applicant was also involved in six other cases of serious nature however, it resulted in acquittal and it shows the propensity of the applicant towards criminality. The learned APP submitted that after taking into consideration the serious allegations, the custodial interrogation of the applicant is imperative and therefore, prayed that the present application may be rejected.

6. The perusal of the first information report would reveal that the applicant and the complainant were having enmity due to various social acclivities which were being conducted in the vicinity of Digha Village. That the applicant wanted to have supremacy over the social activities being carried out by the complainant. The first information report would reveal that the alleged abuses on the caste of the complainant were given by the applicant on a public road. The police are still investigating the crime and the statements of witnesses if at all are yet to be recorded. According to me as per the FIR a clear prima facie case as contemplated under the provisions of the S.C. &S.T. (Prevention of Atrocities) Act is made out as against the applicant. It is to be noted here that due to persistent harassment or threats administered by the applicant, the complainant decided to take the extreme step to commit suicide which was unsuccessful. As the complainant has survived from the said attempt, it is necessary and imperative for the police to unearth the entire truth behind the crime. The record reveals that the applicant is also involved in three other cases of serious nature and when he was on bail he has committed the present crime. It therefore, appears that the applicant has misused the conditions of bail imposed upon him in earlier crimes.

7. After taking into consideration the serious allegations against the applicant and the gravity of the offense, this Court is of the view that, this is not a fit case to grant pre-

arrest bail to the applicant.

The application is accordingly rejected.

(A.S.GADKARI, J.)