

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 232 OF 2017

Akhtar Nurul Haq Rine & Ors.	Appellants
V/s.	
The State of Maharashtra and anr.	Respondents

Mr. Shirish Gupte, Senior Counsel i/by. Ms. Supriya Kak,
Advocate for the appellants.

Mr. Nitin Satpute, Special Public Prosecutor a/w. Mr. H.J.
Dedhia, APP for respondent, State.

Mr. Sagar Mohite, Advocate for the original complainant.

CORAM :- SMT. V.K. TAHILRAMANI, &

SANDEEP K. SHINDE, JJ.

DATE :- 1ST AUGUST, 2017.

ORAL ORDER (PER :- SANDEEP K. SHINDE, J)

1. This Appeal under Section 14(A) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1959 (as amended upto date) (hereinafter called "the said Act" for short) is preferred by

the applicants against the order dated 23rd May, 2016 passed by the Learned Additional Sessions Judge, Mumbai thereby rejecting their application for anticipatory bail.

2. Pending Appeal, this Court, vide order dated 7th March, 2017 afforded interim protection to the applicant which is in force till today.

3. Heard Learned Counsel for the applicants, Learned Special Public Prosecutor for the State and Learned Counsel for the complainant.

4. One, Pravin Suresh Kamble reported to Nehru Nagar Police Station that on 28th April, 2016 at about 5.20 p.m.. one, Mohd. Zafir Akhtar Raheen (accused no.1) alongwith his wife, parents, four sisters, uncle, friends and other unknown 50-60 persons barged into his house with weapons and started abusing complainant's father and mother who were present in the house. He has

further reported that, on 9th July, 2014 he had executed Development Agreement with M/s. Hirani Developers but since he had financial problems, accused no.1 agreed to finance him. That, to afford security to accused no.1 against the financial help, a Leave and License agreement was executed between him and accused no.1 whereby the complainant was permitted to occupy his house i.e. Apartment No.101, Nehru Nagar, Kurla (East), Mumbai (hereinafter called as "the said apartment") as a Licensee of accused no.1 upon certain terms and conditions. The complainant would allege that, he was permitted to occupy the said house/apartment till he receives the consideration of Rs.30,00,000/- from accused no.1. He would report that, he did not receive the agreed consideration from accused no.1. He alleged, on 28th April, 2016, accused no.1 and the applicants herein, wrongfully attempted to dispossess him from the said Apartment and/or interfered with the enjoyment of his right over the said Apartment against his will and without his consent. He would further allege that, at a given point

of time i.e. on 28th April, 2016 he was not in his house but soon after, he was informed of the incident, he reached the said Apartment. It is his case that, accused no.1, the applicants herein and a large mob, not only damaged the belongings in the flat but they were armed with deadly weapons and assaulted him. He would complain that, his parents were abused in relation to their caste. He would allege that the applicants and accused no.1 abused him relation to his caste. He would further allege that, valuable belongings were taken away by the applicants and their companions. On this complaint, C.R. No.91 of 2016 came to be registered against the applicant under Sections 452, 427, 323, 504, 506, 355, 397, 450, 143, 147, 148, 149 of Indian Penal Code and under Sections 3(I)(v), (x) and (xv) of the S.C./S.T. Act.

5. It appears that, accused no.1 was arrested on 1st June, 2016 and was released on bail by this Court on July 24, 2017. The applicants herein were afforded protection by the trial Court, as well as, by this Court

during the pendency of their pre-arrest bail.

. The Learned Counsel for the applicants, submitted that, there was a delay in lodging the FIR and would submit that the complaint is false and an afterthought. He would submit that on 28th April, 2016 the complainant had lodged a non-cognizable complaint only against accused no.1 and the said non-cognizable complaint does not suggest that on 28th April, 2016 the applicants herein alongwith the huge mob, wrongfully dispossessed the complainant and his family members from the said Apartment nor the non-cognizable complaint refers to the alleged abuses given by the accused to the complainant and/or to his parents in relation to their caste. The Learned Counsel would further submit that, there is no explanation as to why the report was not lodged on the very date of the alleged incident. He would submit that, there is no plausible explanation as to why the FIR was lodged

belatedly on 2nd May, 2016. He would therefore submit that, the complaint is false, afterthought and it came to be lodged as an offshoot of a dispute between the accused no.1 and the complainant in respect of the said Apartment. On this premise, the Learned Counsel would submit that, bar under Section 18 of the said Act, has no application to the case in hand for exercising the powers under Section 438 Criminal Procedure Code. He would further submit that, even otherwise the investigation is over and therefore the custody of the applicant is not required.

6. On the other hand, the Learned Special Public Prosecutor would submit that, a duty is cast on the Court to verify the averments made in the complaint and find out whether offence under Section 3(I) of the Act has been *prima-facie* made out. He would submit that, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with the

caste name, the accused persons are not entitled to anticipatory bail.

. He has invited our attention to the averments in the complaint relating to abuses given by the accused to the complainant and his parents in relation to their caste. He further submitted that, in view of Section 18 of the said Act, the Court cannot grant pre-arrest bail to the applicants.

. The Learned Special Public Prosecutor, submitted that, he reported the incident to the police on the date of the incident. However, the police refused to record the correct version and therefore he made a complaint to the Deputy Commissioner of Police (DCP) on 30th April, 2016. He has taken us through the said complaint which refers to the incident, the assault by the accused and the applicants herein to him and to his parents and also refers to abuses given to him and his parents in relation to their caste. Relying on the complaint

made to the DCP, the Learned APP submitted that the FIR came to be lodged only after the directions were issued to the concerned police station and therefore there was no delay on the part of the complainant. He therefore submitted that, the allegations in the complaint are not an afterthought. He would further submit that, the police have recorded the statements of his wife and has taken us through the statement of Fayaz Shaikh.

. We have gone through the statements of the witnesses and the complaint of the complainant. There is a clear assertion in the complaint, as well as, in the report to the DCP that, the complainant and his parents were abused by the accused in relation to the caste. After going through the statements of the various witnesses and the statement of one, Usha Pimputkar, neighbour we are of the opinion that there was a clear attempt to wrongfully dispossess and interfere with the

complainant's right to enjoy the said premises/apartment within the meaning of explanation appended to Clause-(g) of sub-section (1) of Section 3 of the said Act. The averments in the complaint i.e. abuses in relation to the caste of the complainant are sufficient to hold that case is made out against the accused for having committed the offence under Section 3(1)(r) of the said Act.

. Admittedly, the apartment/premises in respect of which there is a dispute between the complainant and the accused was occupied by the complainant and his parents. The statements of the witnesses would clearly indicate or suggest that the applicants-accused caused force to the complainant and his family members to leave the said house/apartment and as such we are of the opinion that, *prima-facie*, the accused have committed an offence under Section 3(1)(2) of the said Act.

7. The Learned APP has drawn our attention to the averments made in the bail application filed in the Sessions Court. He has pointed out, that the applicants had claimed and asserted in the bail application that, they belonged to a scheduled caste community and therefore the offence under the SC/ST Act cannot be registered against them. The Learned Special Public Prosecutor submitted, the statement in the bail application was false to the knowledge of the applicants as admittedly they belonged to "Other Backward Class Community". He would therefore submit, on this ground alone, the petitioners are not entitled to any relief, much less, discretionary relief.

. On the other hand, the Learned Counsel has brought to our notice, communication dated 15th June, 2016 received by the State from the State of Bihar with reference to the caste of the applicants herein. The Learned Counsel for the applicant has referred to list enclosed to communication dated 10th September, 2015 issued by the Bihar

Government, wherein the caste of the present applicant is classified at serial no.98 "Raeen or Kunjara (Muslim) as OBC". Relying on the certificates of each of the applicants herein issued by the Government of Bihar, the Learned Counsel for the applicants submitted that the statement made in the bail application at the highest could be held as "incorrect statement" but not a "false statement".

. We have perused the relevant circulars/communications from the State of Bihar, which shows that, the applicants are not belonging to the "Schedule Caste" but they belong to the "Other Backward Class" Community. The averments in the bail application are in terms that, the applicants belonged to the scheduled caste and therefore it cannot be said that the statement was not false but incorrect.

. Be that as it may, the fact remains, that there is, *prima-facie*, evidence on record to indicate and suggest that the applicants have committed the offence under Section 3(1)(v), corresponding Section 3(1)(g), under Section 3(1)(x) corresponding Section 3(1)(r) and 3(1)(xv) corresponding Section 3(1)(z) of the Act and therefore the bar under Section 18 is clearly attracted. Considering the facts and circumstances of the case, pre-arrest bail is refused to the applicants. However, since there was interim protection granted to the applicants which was running in their favour for more than a year, the said protection is extended for a period of 3 weeks from today. The Appeal is dismissed and disposed off accordingly.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)