

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.656/2017

Diwakar s/o Sonulal Tembhare and ors. ..vs.. State of Maharashtra through
PSO P.S. Gondia (City), Dist. Gondia.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. D. V. Mahajan, Advocate for applicant.
Mr. T. A. Mirza, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.
DATED : SEPTEMBER 15, 2017

This is an application for pre-arrest bail. Though the application is being listed for the first time, the learned A.P.P. is not only ready with the matter but has also tendered the reply, which is taken on record. The noticeable change in the office of the Public Prosecutor is highly appreciated by this Court.

Heard Mr. D.V. Mahajan, Advocate for the applicant and Mr. T.A. Mirza, A.P.P. for non applicant-State in extenso. The Court is having advantage of reading the reply and perusing the investigation papers.

The FIR is lodged by one Smt. Manju on 14.08.2017 with Police Station, Gondia for an offence punishable under Sections 504, 506 of the Indian Penal Code and Sections 3 (1) (f) (r) (s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The FIR is registered as Crime No.470/2017. The present applicants are named as the accused persons in the FIR. The FIR shows that the first informant resides

in the house since last 100 years. According to the FIR, there is a dispute in between families of the first informant and the non applicants in respect of the adjacent land. As per the FIR, the applicants, in order to obtain possession of the said land are extending threats and used to use abusive words in the name of caste. It is stated that father-in-law of the first informant Haridas Borkar is working at M/s. Hanif Khan Kale Khan Bidi Company at Gondia while her husband Prashant is also working at Gondia. According to the FIR, threats were extended to them that they will have to face the dire consequences. Since the first informant belongs to the Scheduled Caste and the applicants are belonging to the upper caste, threats are given.

From the FIR it is crystal clear that the first informant has not disclosed the type of alleged utterances by the applicants. Further, the FIR is totally silent as to whether the utterances were given within the public view.

Further perusal of the investigation papers shows that the first informant Manju has improved her version when her police statement was recorded on 16.08.2017 whereat she has specifically pointed out all types of utterances were made. However, even her police statement is also totally silent as to whether the utterances were made within the public view.

The statements of father in law and the

brother in law of the first informant are also recorded. Those are recorded on 16.08.2017. Perusal of their statements shows stereotype versions. Insofar as the delay is concerned, it is stated that since the first informant Manju was threatened therefore she approached the police at a belated stage. However, at the same time, it is established on record that father in law, brother in law and husband, are working at Gondia. It was well within their domain to lodge immediately the alleged utterances to the police. However for the reasons best known to these three persons, they kept mum.

Insofar as the possession part is concerned, two months prior to the alleged incident, the applicant no.3 has filed a report against the father in law and the first informant with Police Station, Gondia that the first informant and her family is trying to make encroachment over the land. The report is registered as NC No.316/2017. The land belongs to the family of the first informant and/or applicant that will be decided before the competent civil Court. However, the fact remains that there exists serious dispute about the possession and/or encroachment over the land in question.

In the aforesaid circumstance, delay caused in lodging the FIR assumes importance. Further, the FIR itself is totally silent about the factum of utterance and not mentioning about those utterances were made within the public view also cannot be lost sight of.

In that view of the matter, this Court is of the view that the applicants have made out a case for anticipatory bail. Despite the fact that there is a bar of Section 18 of the Act since the aforesaid discussion shows that the possibility of false implication is not completely ruled. Hence, following order is passed.

ORDER

(i) Criminal Application No.656/2017 is allowed.

(ii) In the event of arrest in connection with Crime No.470/2017 registered with Police Station Gondia (City) for an offence punishable under Sections 504, 506 of the Indian Penal Code read with Section 3 (1) (f) (r) (s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, applicant no.1-Diwakar s/o Sonulal Tembhare, applicant no.2-Dileshwar @ Dilesh s/o Diwakar Tembhare, applicant no.3-Gabbar @ Rajesh s/o Diwakar Tembhare, applicant no.4-Pradip @ Bandi s/o Jaiprakash Tembhare and applicant no.5-Lalit s/o Jaiprakash Tembhare, be released on bail on they executing P.R. Bond in the sum of Rs.25,000/- each with two solvent sureties each in the like amount.

(iii) All the applicants are directed to attend Police Station, Gondia (City) twice a week i.e. on every Tuesday and Thursday in between 3.00 p.m. to 5.00 p.m. for a period of two months from today.

(iv) All the applicants shall maintain diary showing attendance in the Police Station. After a period of two months the applicants can approach to the Court for relaxation of condition.

(v) The applicants shall not extend any types of threats to the first informant or her family members.

The application stands disposed of.

JUDGE

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