

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

CRIMINAL APPLICATION (APPLN) NO.132/2014

Madhukar s/o Janardan Gondane Vs. State of Maharashtra and others

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

Court's or Judge's orders.

Shri Y.V.Nayyar Advocate for applicant.
Shri N.H.Joshi, APP for respondent no.1
Shri A.S.Tiwari, Adv. for respondent nos. 2, 3 and 4.

CORAM : N.W.SAMBRE, J.
DATE : MARCH 24, 2017

At the behest of the present applicant, Crime No 169/2014 for an offence punishable under Sections 143,147,148,149, 323 of the Indian Penal Code and 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribe, Prevention of Atrocities Act (for short, Prevention of Atrocities Act) came to be registered against the respondent, in which they are ordered to be released by the learned Special Judge, Nagpur, in the event of their arrest. It is this order which is questioned by the complainant in the present application. Learned counsel for the applicant Shri Nayyar made the following submissions :

(1) That the hearing of the present application needs to be deferred as the proceedings

challenging the FIR is already sub judice before the Division Bench, in which there is a stay of the further proceedings.

(2) In spite of express bar under Section 18 of the Prevention of Atrocities Act, the learned Special Judge has proceeded to grant pre-arrest bail thereby committed an error of law.

(3) The first information report cannot be termed as encyclopedia consisting of all the necessary material averments. What is required to be noticed is, whether prima facie satisfaction of an ingredient of Sections under which an offence is registered is satisfied or not.

For the purpose of cancellation of bail, he would rely upon the judgment of the Hon'ble Apex Court in the matter of **Shakuntala Devi Vs. Baljindersingh reported in 2013 STPL(Web) 34 SC** and the judgment in the case of **Vilas Pandurang Pawar Vs. State of Maharashtra and others delivered in SLP(Criminal)6432/2012 decided on 10.09.2012** so as to give support for express bar in the matter of grant of pre-arrest bail in an offence under the Atrocities Act.

Learned APP for the State supports the claim of the present applicant/original complainant.

Shri Tiwari learned counsel for respondents - accused would submit that once the

pre-arrest bail in the matter is granted, the parameters for cancellation thereof are altogether different and this Court in a routine manner should not cancel the bail. According to him, even perusal of the FIR does not depict satisfaction of the ingredients of the offence under Atrocities act. He is praying for dismissal of the application.

Though the Division Bench has stayed further proceedings arising out of crime in question, however, such a stay cannot be stretched to the extent to stay to the hearing of the present application. This Court is only required to consider whether power exercised by the learned Special Judge while granting pre arrest bail in the matter of offence punishable under the Atrocities Act, has exceeded its jurisdiction or an order is without jurisdiction.

From the perusal of the FIR what could be gathered is that the report as regards the incident in question, claimed to have taken place and F.I.R. came to be lodged on 16.09.2014. FIR does not depict any specific date on which the alleged incident took place, which has resulted into the registration of crime. Apart from above, FIR depicts that there are general and vague allegations made against respondents accused persons. In such an eventuality, the exercise of power by learned Special Judge under

Section 438 of Cr. P.C., in my opinion, is very much justified as no prima facie involvement of the accused in crime in question could be inferred.

There is one more facet to the matter i.e. registration of Crime No. 173/2014 pursuant to the incident dated September 16, 2014 against the present applicant for an offence punishable under Sections 294, 143, 509, 354-D of the IPC. In both the FIRs what could be inferred is the offences claimed to be committed in a group. As a consequence, inference can also be drawn that an offence was caused because of political enmity between the complainant and the respondents accused.

Though the learned counsel for the applicant was right in inviting attention of this Court to the judgment of the Apex Court in the matter of *Vikas Pawar and Shakuntala Devi* (supra), the exercise of powers under Section 438 of Cr. P C has no bar as is laid down by the Apex Court in catena of judgments particularly when, upon plain reading, it may be inferred that the offence alleged in the incident prima facie appears to be incorrect or the necessary ingredients of the offence / concerned sections are not satisfied.

In view of eventualities, as is noted hereinabove, particularly from the contents of the

FIR lodged by the present applicant, in my opinion, powers exercised under Section 438 of Cr.P.C. by the learned Special Judge is very much justified. No case is made out for interference. The application is rejected.

JUDGE

Andurkar..