

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.920 OF 2017

Akshay Abaso Jagtap,
Age : 22 years, Occu. Education,
R/o.Vadiyeraibag, Tal.Kadegaon,
Dist.-Sangli.

... **Appellant**

V/s.

1. The State of Maharashtra,
(At the instance of Chinchani Wangi
Police Station, Sangli)

2. Rohit Subhash Kamble,
Age. : 28 years, Occu.Agriculturist,
R/o.Vadiyaraybagh, Tal.Kadegaon,
Dist.Sangli.

... **Respondents**

.....
Mr.R.A.Naik i/b. Mr.Umesh R. Mankapure, Advocate for the
Appellant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent No.1/State.

Mr.Ganesh Bhujbal, Advocate for the Respondent No.2.

....

CORAM : A.M.BADAR J.

DATED : 4th OCTOBER 2018.

ORAL JUDGMENT :

1 Heard.

2 Admit.

3 Heard finally as the appeal relates to challenge to the
Order rejecting the application for anticipatory bail.

4 By this appeal, the appellant/accused in Crime No.81
of 2017 registered at Chinchani, Wangi Police Station, District
Sangli at the instance of respondent No.2 Rohit Subhash Kamble
for the offences punishable under Sections 143, 147, 149, 323,
504 and 506 of the Indian Penal Code as well as under Section
37(1)(3) read with 135 of the Maharashtra Police Act, 1951 so
also under Section 3(1)(o)(r)(s) of the Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter
referred to as the 'Atrocities Act' for the sake of brevity) and under
Sections 10 and 7(1)(d) of the Protection of Civil Rights Act, 1955,
is challenging the Order dated 07/11/2017 passed by the learned
Additional Sessions Judge, Sangli in Criminal Bail Application
No.916 of 2017 so far as it relates to rejection of his claim for
anticipatory bail in the subject crime.

5 Heard the learned Counsel appearing for the
appellant/accused. He argued that Section 3(1)(o) of the
Atrocities Act is not applicable to the case in hand as there are no
allegations to the effect that the offences took place because the
First Informant had voted or not voted to a particular candidate.

He further argued that other Sections of the said Act invoked against him are not applicable considering the material on record.

6 The learned Additional Public Prosecutor argued that in view of bar of Section 18 of the Atrocities Act, the appeal, as framed and filed, is not maintainable. According to the learned Additional Public Prosecutor, the FIR lodged by Rohit Subhash Kamble specifically mentions the fact that the appellant/accused had given casteist abuses by uttering the words “ म्हारग्या तुला जास्त मस्ती आहे ” meaning thereby that 'you people belonging to *mahar* caste has become insolent'.

7 I also heard Mr.Bhujbal, the learned Counsel appearing for the respondent No.2/ First Informant. He argued that the incident in question took place near the polling booth which is a public place and, therefore, bar of Section 18 of the Atrocities Act is applicable and, as such, the appeal deserves to be dismissed.

8 I have carefully considered the rival submissions and also perused the record made available.

9 According to the prosecution case, First Informant/ Rohit Subhash Kamble was representative of Bhairavnath Panel for Grampanchayat election which was scheduled to be held on 16/10/2017. He averred that he went to his house for drinking

water and while returning, near the Polling Booth, the present appellant along with Pravin Jagtap accosted him. The present appellant/accused uttered casteist abuses by saying that “ म्हारग्या तुला जास्त मस्ती आहे ” meaning thereby that 'you people belonging to *mahar* caste has become insolent'. First Informant/Rohit Subhash Kamble also narrated the incident which allegedly took place on 10.45 a.m. of 16/10/2017. He stated that at that time, the present appellant/accused along with co-accused assaulted him and abused him. First Informant/Rohit Subhash Kamble did not claim that at this point of time there was insult or intimidation to him for the purpose of humiliating him, he being the member of the scheduled caste or scheduled tribe. He has not averred about hurling casteist abuses at 10.45 a.m.

10 For attracting the penal provisions of Sections 3(1)(r) and 3(1)(s), intentional insult or intimidation with an intent to humiliate the member of the scheduled caste or scheduled tribe needs to take place in any place within public view. Similarly, casteist abuses are required to be hurled in any place within public view. The words 'in any place within public view' came to be interpreted by the learned Division Bench of this Court in the matter of *Pradnya Pradeep Kenkare & Ors. v. State of Maharashtra*¹. Relevant portion of paragraph 8 of that Judgment reads thus :

¹ MANU/MH/0359/2005.

“8.....The provisions of Section 3(1)(x) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being "within public view". The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under Section 3(1) (x) of the said Act. In the provision of law comprised under Section 3(1)(x) of the said Act, the word "view" refers to that of 'public' but prefixed by the expression "in any place within". Being so, the word "public" not only relates to the location defined by the word "place" but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any

one of those ingredients would not be sufficient to accuse the person of having committed an offence under Section 3(1)(x) of the said Act.”

11 It is thus clear that the incident or insult or intimidation as well as hurling casteist abuses to a member of scheduled caste or scheduled tribe has to occur in a place accessible to and in presence of the public. The presence of both these ingredients are *sine qua non* for invoking provisions of the Atrocities Act. Keeping in mind this aspect, it becomes clear that the FIR do not show that the alleged incident took place in presence of any public person. At this juncture, it is apposite to quote the observations of the Honourable Delhi High Court in the matter of **Daya Bhatnagar & Ors. v. State**¹, wherein in paragraph 19 it is held thus :

“19.....Keeping this in view, looking to the aims and objects of the Act, the expression “public view” in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, person having any kind of close relationship or association with the complainant would necessarily get excluded.”

1 MANU/DE/0085/2004.

12 As the FIR do not show that the alleged incident in question took place in presence of any public person, though it happens near the Polling Booth, bar of Section 18 of the Atrocities Act is not applicable to the case in hand. So far as other offences under the Indian Penal Code are concerned, I am of the considered view that custodial interrogation of the present applicant is not warranted, particularly in the wake of the fact that the co-accused have already granted bail by the learned trial Court. Therefore, the Order :

ORDER

- (i) The appeal is allowed.
- (ii) The impugned Order dated 07/11/2017 in Criminal Bail Application No.916 of 2017 passed by the learned Additional Sessions Judge, Sangli so far as it relates to rejection of claim for anticipatory bail of the present appellant/accused is quashed and set aside.
- (iii) The application for anticipatory bail by the appellants is allowed.
- (iv) In the event of his arrest in Crime No.81 of 2017 registered at Chinchani, Wangi Police Station, District Sangli at the instance of Respondent No.2/Rohit Subhash Kamble, the appellant/accused be released on bail on his

executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.

- (v) As a condition of this Order, the appellant/accused shall not tamper the prosecution evidence.
- (vi) As a condition of this Order, the applicant/accused shall not extend any threat inducement or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
- (vii) As a condition of this Order, the applicant/accused has to attend the concerned Police Station as and when directed by the Investigating Officer for the purpose of investigation.
- (viii) The appeal is disposed of accordingly.

(A.M.BADAR J.)