

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.73 OF 2018**

**NETAJI DADARAO KASHID**

**)...APPELLANT**

**V/s.**

**THE STATE OF MAHARASHTRA & ANR. )...RESPONDENTS**

Mr.Niranjan Mundargi a/w. Mr.Mahesh Chandanshiv, Advocate for the Appellant.

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

Mr.S.V.Gavand, APP for the Respondent – State.

Mr.Sunil Shivaji Gaikwad, P.N.6798, Police Station Chikhli, Pimpri Chinchwad, present in court.

Mr.Sachin Udhav Shinde, Original Complainant is present in the court.

**CORAM : A. M. BADAR, J.**

**DATE : 24<sup>th</sup> OCTOBER 2018**

**ORAL JUDGMENT :**

1            Heard all parties. Admit. Heard forthwith considering the fact that the appellant/accused is challenging rejection of anticipatory bail moved by the appellant/accused. The

appellant/accused is an accused in Crime No.673 of 2017 registered with Police Station Nigdi, Pune, on 28<sup>th</sup> November 2017 at the instance of respondent no.2 Sachin Shinde for offences punishable under Sections 3(1)(c)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By this appeal, the appellant/accused is challenging the order dated 19<sup>th</sup> January 2018 passed by the learned Additional Sessions Judge, Pune, rejecting the Anticipatory Bail Application bearing No.4155 of 2017 moved by the appellant/accused.

2            Heard the learned counsel appearing for the appellant/accused. He argued that much before registration of subject crime, the appellant/accused had preferred a complaint against respondent no.2 Sachin Shinde and his brother Amarkant Shinde on 28<sup>th</sup> June 2017. This complaint was lodged with the Commissioner of Police, Pune, Police Inspector of Anti Extortion Cell, Pune and Police Inspector of Nigdi Police Station. This complaint has ultimately resulted in registration of Crime No.266 of 2018 against respondent no.2/ First Informant Sachin Shinde

and his brother Amarkant Shinde for offences punishable under Sections 385, 392, 504, 506 read with 34 of the Indian Penal Code with Police Station Nigdi. The learned counsel further argued that because of this complaint of the appellant/accused, the subject First Information Report (FIR) is filed by the respondent no.2. It does not reflect that the offence took place within public view. The allegations are false and the learned trial court erred in rejecting the application for anticipatory bail. He placed reliance on order dated 6<sup>th</sup> May 2014 passed by the learned Single Judge of this court (Coram : Mridula Bhatkar, J.) in Anticipatory Bail Application No.412 of 2014 wherein it is held that previous complaint against the First Informant and his relatives lifts the bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3           I have heard the learned APP appearing for the State. He opposed the appeal by contending that the offence took place within public view and there are witnesses to the incident who are named in the FIR. One more person has witnessed the incident.

4           Shri Bhujbal, the learned appointed advocate tendered reply of respondent no.2 on record and argued that the incident in question took place within public view and there are specific allegations in respect of casteist abuses against the appellant/accused. Therefore, the appeal deserves to be dismissed. He further submitted that there is threat to the life of respondent no.2 for which the respondent no.2 has lodged several complaints to several authorities. He also drew my attention to the complaint filed by respondent no.2 Sachin Shinde with the Superintendent of the State Excise, Pune.

5           I have considered the submissions so advanced and also perused the material placed on record including the FIR.

6           It is not disputed either by the State or by respondent no.2 Sachin Shinde that on 28<sup>th</sup> June 2017, appellant Netaji Kashid had lodged a complaint to the Commissioner of Police as well as Police Inspectors of Anti Extortion Cell and Nigdi Police Station. This complaint was against respondent no.2 Sachin

Shinde and his brother Amarkant Shinde. Undisputedly, this complaint has resulted in registration of Crime No.266 of 2018 for offences punishable under Sections 385, 392, 504, 506 read with 34 of the Indian Penal Code against respondent no.2 Sachin Shinde and his brother Amarkant Shinde with Police Station Nigdi. Allegations in this crime are to the effect that on 20<sup>th</sup> June 2017, respondent no.2 Sachin Shinde attempted to extort an amount of Rs.10 lakh from appellant/accused Netaji Kashid. He threatened Netaji Kashid that he is having important documents in respect of Hotel New Pune owned by appellant/accused Netaji Kashid and if the amount of Rs.10 lakh is not paid to him by 8.30 p.m. of that day, he will cause the hotel to be sealed by the authorities. Allegations in this crime are also to the effect that on the same day, in night hours, Amarkant Shinde – who happens to be brother of respondent no.2 Sachin Shinde, made a phone call to appellant/accused Netaji Kashid and threatened him as well as abused him on supply of the cable network by the appellant/accused.

7            On this backdrop, the FIR lodged on 28<sup>th</sup> November 2017 by respondent no.2 Sachin Shinde against appellant/accused Netaji Kashid needs to be looked into. First Informant Sachin Shinde alleged that on 12<sup>th</sup> September 2017, he lodged complaint against appellant/accused Netaji Kashid with the Superintendent of the State Excise. Therefore, feeling aggrieved and angry by this conduct of respondent no.2, the appellant/accused came to his garage and in presence of his friends Kishor Telang and Ketan Jadhav and two other friends, threatened him to withdraw the complaint lodged with the State Excise and abused him by stating that persons belonging to Mahar or Mang caste are not in a position to do anything else but such type of activities.

8            Perusal of the report lodged by First Informant/ respondent no.2 Sachin Shinde is conspicuously silent about caste of appellant/accused Netaji Kashid. Relevant observations of the Honourable Apex Court in paragraph 6 of the judgment in the matter of Gorige Pentaiah vs. State of Andhra Pradesh and Others<sup>1</sup> read thus :

---

1    (2008) 12 SCC 531

“6 .....According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No. 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.”

In view of these observations of the Honourable Apex Court, mentioning of the fact that the accused is not a member of the Scheduled Castes or Scheduled Tribes is essential.

9 At this juncture, it is apposite to quote observations of the learned Division Bench of this court in the matter of **Pradnya**

**Pradeep Kenkare and Ors. vs. State of Maharashtra**<sup>2</sup>. They

read thus :

“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

---

<sup>2</sup> 2005 (3) MH.L.J. 368

"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."

10            These observations make it clear that intention to insult or intimidation has to occur in a place accessible to and in presence of public. Presence of both these ingredients is sine-qua-non for making out the offence punishable under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

11            The expression "public view" is clarified by this court in the matter of Balu s/o. Bajirao Galande vs. State of Maharashtra and Another<sup>3</sup>. The relevant observations are thus :

<sup>3</sup> 2006 6 AIR (BOM) (R) 251

“19 Considering the judicial pronouncements on the subject, the expression within public view must be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of at least one independent person. The test of audibility and visibility can be taken to have been satisfied if an independent person is actually present or is at a place where the utterances are clearly audible and reaches the scene of occurrence while the incident is still in progress.”

Thus, the incident is required to be witnessed by independent public person in order to bring it within a public view.

12 Viewed from this angle, if averments in the FIR are perused, then those make it clear that the incident was witnessed only by friends of the First Informant/ respondent no.2 Sachin Shinde. The incident was not witnessed by any independent public person so as to bring it within public view.

13 The net result of foregoing discussion leads me to hold that no prima facie case for offences punishable under Sections

3(1)(c)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out, so as to invoke bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

14           Moreover, the subject FIR was filed much after the appellant/accused had raised grievance about threat of extortion of Rs.10 lakh by respondent no.2/ First Informant to him. This threat is materialized, as seen from the complaint annexed to the reply of respondent no.2. It was lodged on 12<sup>th</sup> September 2017 with the Superintendent of the State Excise for taking action against the hotel of the appellant/accused. Subsequent to the complaint lodged by the appellant/accused against the respondent no.2, the respondent no.2 has chosen to lodge FIR. Prima facie, allegations in the subject FIR, as such, seems to be motivated. The Honourable Apex Court has held thus in paragraph 59 of its judgment in the matter of **Dr.Subhash Kashinath Mahajan vs. State of Maharashtra and Another**<sup>4</sup>:

---

4   2018 ALL MR (Cri) 1773 (SC)

“59 There can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated.”

15 In the result, the appeal deserves to be allowed. The impugned order rejecting the application for anticipatory bail cannot be sustained as bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand. Therefore, the order :

### **ORDER**

- i) The appeal is allowed.

- ii) The impugned order dated 19<sup>th</sup> January 2018 passed by the learned Additional Sessions Judge, Pune, below Exhibit 1 in Anticipatory Bail Application No.4155 of 2017 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellant/accused is allowed.
- iv) In the event of arrest of the appellant/accused in Crime No.673 of 2017 registered with Police Station Nigdi, Pune, on 28<sup>th</sup> November 2017 at the instance of respondent no.2 Sachin Shinde for offences punishable under Sections 3(1)(c)(r)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 the appellant/accused be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- v) The appellant/accused shall not make any inducement, threat or promise to any person acquainted with the facts of

the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.

- vi) The appellant/accused should not contact respondent no.2 or his relatives in any manner.
- vii) The appellant/accused should attend the concerned Police Station as and when required by the Investigating Officer for the purpose of investigation of the subject crime.
- viii) The appeal is disposed off.

**(A. M. BADAR, J.)**