

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.90 OF 2018

SUVARNA ATUL PATHAK)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ganesh Gole a/w. Mr.Shyamrishi Pathak, Advocate for the Appellant.

Mr.Sachin Thorat, Advocate for Respondent No.2.

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

Mr.Karadkar, Assistant Police Inspector, Vile Parle Police Station, present in the court.

CORAM : A. M. BADAR, J.

DATE : 12th JULY 2018

ORAL JUDGMENT :

1 Heard. Admit. Heard finally, by consent of parties.

2 The appellant/accused herein is a lady who is accused in Crime No.181 of 2017 for offences punishable under Sections 354, 504, 506, 509 of the Indian Penal Code and under Sections 66(E) and 67 of the Information and Technology Act as well as under Sections 3(1)(r)(s)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Challenge in this appeal is to the order dated 25th January 2018 passed by the learned Special Judge, Greater Mumbai, in Anticipating Bail Application No.159 of 2018 by which the said application for pre-arrest bail moved by the appellant/accused Suvarna came to be rejected.

3 Heard both sides. Shri Gole, the learned counsel appearing for the appellant/accused drew my attention to the first statement of the respondent no.2/First Informant recorded by Vile Parle Police Station and argued that there are no averments attracting the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in the said statement. He further referred to several subsequent statements and argued

that subsequent statements also do not show averment in respect of attracting the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in respect of incident dated 11th December 2016. It is argued that in pursuant to the First Information Report (FIR) lodged by the present appellant/accused against the respondent no.2/First Informant, the offence came to be registered at Police Station Navghar, Mumbai. Respondent no.2/First Informant was required to approach initially to the Sessions Court, Mumbai, and then to this court for seeking anticipatory bail, but that application came to be withdrawn as rejected, and she was directed to surrender. A day earlier to her surrender, supplementary statement came to be made by the respondent no.2/First Informant by leveling allegations attracting provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and therefore, in submission of the learned counsel appearing for the appellant/accused, bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable. My attention is drawn to various complaints and cross

FIRs lodged by the parties against each other. It is further argued that because of delay in lodging the FIR, bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable, in view of the judgment of the learned Division Bench of this court in the matter of Ambadas Devidas Yeralkar and Anr. vs. The State of Maharashtra and Anr.¹.

4 The learned APP opposed the application by contending that statement of several witnesses are recorded by the Investigator who are vouching about the incident dated 11th December 2016, and therefore, the application for anticipatory bail came to be rightly rejected by the learned trial court.

5 I have also heard the learned counsel appearing for the respondent no.2/First Informant. He argued that there was theft of gold ornaments of the respondent no.2/First Informant and she attempted to lodge report in respect of that incident. However, the police did not register her FIR, and therefore, she was constrained

1 Criminal Appeal No.405 of 2017 decided on 7th June 2017

to move the higher-ups in the police for ventilating her grievance. Her statement came to be recorded on 24th January 2017, but in that statement also, averments in respect of the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, were not reflected. Hence, she again moved a complaint to the Commissioner of Police on 18th February 2017, and thereafter, her statement dated 20th March 2017 came to be recorded. The learned counsel further relied on judgment of the learned Division Bench of this court in the matter of **Akash Rajendra Kadave vs. State of Maharashtra**² to buttress his contention that bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is applicable to the case in hand, and therefore, application for anticipatory bail cannot be entertained. He relied on paragraphs 4 and 5 of this judgment wherein the learned Division Bench of this court has observed that a case for the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was made out, and therefore, the learned Judge rightly rejected the application for anticipatory bail.

² Criminal Appeal No.690 of 2017 decided on 22nd March 2018

6 I have carefully considered the rival submissions and also perused the record made available including papers of investigation. Subject crime i.e. Crime No.181 of 2017 came to be registered at Police Station Vile Parle on 26th May 2017 on the basis of two statements of respondent no.2/First Informant Rajshree Kale. Her first statement is dated 24th January 2017 and the second statement is dated 20th March 2017. The first statement dated 24th January 2017 makes it clear that the appellant/accused as well as respondent no.2/First Informant were acquainted with each other right from 18th April 1997 and that acquaintance developed into intimacy, and subsequently, in lesbian relationship between both of them. Whatsapp conversation between the appellant/accused and the respondent no.2/First Informant is placed on record by the appellant/accused which shows that respondent no.2/First Informant was referring the appellant/accused as her “Beautiful wife to whom she loves always.” The statement dated 24th January 2017 of the respondent no.2/First Informant shows that the appellant/accused

was assuring her that she is going to divorce her husband and subsequently, they would marry each other. The respondent no.2/First Informant further made grievance in this statement dated 24th January 2017 to the effect that the appellant/accused has committed breach of trust by having sexual relations with her husband and others. This appears to be her principal grievance in the first statement dated 24th January 2017. Apart from that, it is also alleged that the appellant/accused had misappropriated gold costing to Rs.1.50 lakh as well as six dresses purchased by the respondent no.2/First Informant for the appellant/accused.

7 How the matter came to be reported to the police by the respondent no.2/First Informant is also relevant in the backdrop of the fact that the respondent no.2/First Informant was considering the appellant/accused as her “Beautiful wife.” On 28th December 2016, respondent no.2/First Informant lodged detailed type written complaint to Senior Police Inspector, Vile Parle. The incident dated 11th December 2016 is referred to in that complaint. It is stated in that complaint that on 11th December

2016, the respondent no.2/First Informant met the appellant/accused at the house of mother of the appellant/accused. At that time, husband of the appellant/accused as well as her daughters were also present. The respondent no.2/First Informant further averred in this complaint dated 28th December 2016 that she requested them to return her money, ornaments and clothes but Atul – husband of the appellant/accused abused her on road and pushed her. Except this, nothing is stated by the respondent no.2/First Informant in respect of the incident dated 11th December 2016 in her written complaint dated 28th December 2016 made to the Senior Police Inspector, Vile Parle Police Station. Averments which may have attracted the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are completely missing from this written complaint dated 28th December 2016.

8 On 10th January 2017, the respondent no.2/First Informant moved another written complaint to the Senior Police Inspector of Santacruz Police Station against the appellant/

accused. The respondent no.2/First Informant has not made any allegations in respect of alleged incident dated 11th December 2016 in this hand written complaint dated 10th January 2017 made by her against appellant/accused Suvarna to the Senior Police Inspector.

9 On 18th February 2017 one more complaint came to be lodged by the respondent no.2/First Informant against the appellant/accused to the Commissioner of Police as well Assistant Commissioner of Police. This is a detail complaint running into about ten pages. The incident dated 11th December 2016 is also described in this type written complaint dated 18th February 2017 by the respondent no.2/First Informant, in the following manner. The respondent no.2/First Informant alleged that on 11th December 2016, she was passing to her mother's house at Vile Parle and saw appellant/accused Suvarna, her husband – Atul and her daughters at about 12.30 p.m. She requested accused persons for return of her belongings but both accused started speaking with her in filthy and dirty language. They had beaten her in

public. Thus, in this detailed complaint, what were the casteist abuses are not stated. Overt act is attributed not only on the part of the appellant/accused but against her husband also.

10 Record reveals that on 27th January 2017 the appellant /accused lodged FIR against the respondent no.2/First Informant with Police Station Navghar, Mumbai, which has resulted in registration of Crime No.21 of 2017 for offences punishable under Sections 354, 509, 506 of the Indian Penal Code and under Sections 66(C)(D) and 67 of the Information Technology Act against the respondent no.2/First Informant. It is also seen that anticipatory bail application in respect of these offences filed by the respondent no.2/First Informant came to be rejected by the learned Additional Sessions Judge, and therefore, the respondent no.2/First Informant approached this court by filing Anticipating Bail Application bearing No.397 of 2017 which came to be rejected as withdrawn on 9th March 2017 by this court with a direction to the respondent no.2/First Informant to surrender before the learned Magistrate on or before 21st March 2017.

11 The matter has to be considered in the backdrop of this order rejecting the anticipatory bail application, moved by the respondent no.2/First Informant, by this court on 9th March 2017. Time to surrender was granted up to 21st March 2017. Then, on 20th March 2017 supplementary statement of the respondent no.2/First Informant came to be recorded by the Vile Parle Police Station. In this supplementary statement, it is averred by the respondent no.2/First Informant that on 11th December 2016, at about 12.30 p.m., she met the appellant/accused in front of house of mother of the appellant/accused. The respondent no.2/First Informant averred that she then demanded back her ornaments from the appellant/accused. Upon that, the appellant/accused abused her in filthy language, beat her by her hands and uttered that you people belonging to Scheduled Castes are beggars and they should remain at their level only. The exact utterances alleged to have been made are to the following effect :

“दिनांक ११/१२/२०१६ रोजी साधारण १२:३० वा. विलेपार्ले पूर्व येथील श्रीमती पाठक यांचे आईच्या घरासमोरील रस्त्यावर ती भेटली असता मी माझे दागिने मागीतल्यामुळे मला घाणेरड्या भाशेत शिवीगाळ करून हाताने मारहान केली व तुम्ही

म्हारडे/शेडयुल कास्ट/बुध्दीश्ट लोक असेच भिकरी असता,
ब्राम्हनांच्या नादी लागायचे नाही. आपापल्या पायरी प्रमाणे रहायचे
निघ येथून असे म्हणून मला तेथून हाकलून दिले.”

12 At this juncture, it is apposite to note that these averments are directed only against the appellant/accused and not against her husband, as has been vaguely alleged in the complaint dated 18th February 2017 made to the Commissioner of Police.

13 It is also seen that on 22nd April 2017, there is another FIR lodged by the respondent no.2/First Informant against the appellant/accused with Police Station Khar bearing Crime No.166 of 2017 for offences punishable under Sections 379, 323, 427, 504 and 506 of the Indian Penal Code. It is alleged in that FIR that the appellant/accused had snatched gold chain of the respondent no.2/First Informant. Order dated 17th January 2018 of this court passed in Anticipatory Bail Application No.1285 of 2017 shows that the said FIR culminated into filing of “B-Summary” report with the averment that false complaint is made by the respondent

no.2/First Informant against the appellant/accused. There is another FIR bearing no.140 of 2017 registered against the respondent no.2/First Informant at the instance of the appellant/accused for offences punishable under Sections 380, 504 and 506 of the Indian Penal Code alleging theft of gold ornaments by the respondent no.2/First Informant. This FIR is registered on 24th March 2017. One criminal case alleging defamation, instituted by the appellant/accused, is also pending against the respondent no.2/First Informant in which it is reported that process has been issued.

14 Thus, checkered history of lodging the FIRs and registration of crimes against each other between the appellant/accused and the respondent no.2/First Informant shows that both the parties, which according to the version of respondent no.2/First Informant, were in lesbian relationship with each other, are totally hostile to each other, and now their relationship has turned into extreme enmity between both of them. Perusal of the first statement dated 24th January 2017, as

noted earlier, is principally to the effect that the appellant/accused has committed breach of trust of the respondent no.2/First Informant by indulging in sexual relationship with other persons, despite being in relationship with her. How such relationship is legal, is a question which need not be considered in this application but suffice to state that first version of the respondent no.2/First Informant is not containing any averments relating to commission of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by the appellant/accused. Such averment by the respondent no.2/First Informant, for the first time surfaces on 20th March 2017 when this court had directed the respondent no.2/First Informant to surrender by 21st March 2017. Though having several opportunities, when she made several complaints against the appellant/accused earlier to 20th March 2017, and after the alleged incident dated 11th December 2016, either no such allegations about commission of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989, were made, or what is alleged is not in consonance with the statement dated 20th March 2017.

15 At this stage, it is apposite to quote observations of the Honourable Apex Court in the matter of **Dr.Subhash Kashinath Mahajan vs. The State of Maharashtra and Another**³ found in paragraphs 59 and 60 of its judgment. They read thus :

“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 provisions 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. If this interpretation is not taken, it may be difficult for public servants to discharge their bona fide functions and, in given cases, they can be black mailed with the threat of a false case being registered under the Atrocities act, without any

3 Criminal Appeal No.416 of 2018 decided on 20th March 2018

protection of law. This cannot be the scenario in a civilized society. Similarly, even a non public servant can be black mailed to surrender his civil rights. This is not the intention of law. Such law cannot stand judicial scrutiny. It will fall foul of guaranteed fundamental rights of fair and reasonable procedure being followed if a person is deprived of life and liberty. Thus, literal interpretation cannot be preferred in the present situation.”

“60 Applying the above well known principle, we hold that the exclusion of Section 438 Cr.P.C. applies when a *prima facie* case of commission of offence under the Atrocities Act is made. On the other hand, if it can be shown that the allegations are *prima facie* motivated and false, such exclusion will not apply.”

16 Taking over all review of the matter, it is seen that the FIR came to be lodged only because relationship between the appellant/accused and the respondent no.2/First Informant turned sour, as according to the respondent no.2/First Informant,

the appellant/accused had lost her interest in that relationship. Viewed from this angle, the FIR seems to be motivated and as such cannot come in way of enjoyment of personal liberty by the appellant/accused. Similarly, the averments regarding commission of offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are made belatedly, after more than two months of first statement dated 24th January 2017 and there is no explanation for this. The learned Division Bench of this court in the matter of Ambadas Devidas Yeralkar and Anr. (supra) in paragraph 4 of its order has observed thus :

“We find that the delay in lodging the FIR has not been satisfactorily explained by the complainant. Looking to the inordinate delay in lodging the FIR, we find much merit in the submission of the learned counsel for the appellants that the appellants have been falsely implicated in this case.”

17 I have carefully examined the judgment dated 22nd March 2018 delivered by the learned Division Bench of this court in the matter of Akash Rajendra Kadave (supra). The said

judgment proceeded on the facts of that case. It is clearly recorded in observations of the learned Division Bench in paragraph 4 of that judgment. The same is, therefore, not applicable to the facts of the instant case, which are elaborately stated in the foregoing paragraphs.

18 In this view of the matter, therefore, in my considered opinion, bar of section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand. Similarly, custodial interrogation of the appellant/accused is not at all warranted in the wake of vague allegations in respect of the alleged misappropriation of gold and six dresses, particularly when, principal cause for giving that statement is something else. Therefore the order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 25th January 2018 passed by the learned Sessions Judge, Greater Mumbai, in Anticipatory Bail Application No.159 of 2018 rejecting the said

application of the appellant/accused is quashed and set aside.

- iii) The Anticipatory Bail Application bearing No.159 of 2018 of the appellant/accused is allowed.
- iv) In the event of her arrest in Crime No.181 of 2017 registered with Police Station Vile Parle, at the instance of respondent no.2/First Informant, the appellant/accused be released on bail on her 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 her so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vi) The appellant/accused should attend the concerned Police Station as and when called for the purpose of investigation, strictly according to the provisions of the law, and that too, only for the purpose of investigation.
- vii) The appeal is accordingly disposed of.

Arti
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(A. M. BADAR, J.)