

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.792 OF 2018

SANDIP BABAN NAGARE AND ORS.)...APPELLANTS

V/s.

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

Mr.M.K.Kocharekar i/b. Mr.Nishant M. Sangle, Advocate for the Appellant.

Mr.Amey Sawant i/b. Mr.Suresh Sabrad, Advocate for Respondent No.2.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 19th OCTOBER 2018

ORAL JUDGMENT :

1 Heard. Admit. Heard finally, considering the fact that the appeal is by the accused in Crime No.37of 2018 registered with Police Station Sailkheda, Nashik, challenging rejection of their application for anticipatory bail, by the learned Special Judge, Niphad.

2 Heard the learned counsel appearing for the appellants/accused. He drew my attention to the First Information Report (FIR) of Crime No.36 of 2018 lodged by appellant/accused no.1 against the respondent no.2/First Informant and others alleging offences punishable under Sections 143, 147, 323, 504 and 506 of the Indian Penal Code and argued that the said FIR is a counterblast to this FIR lodged first in point of time by the appellant/accused no.1 Sandip Nagare, who happens to be Sarpanch of Village Varedarana. By taking me to the subject FIR of Crime No.I-37 of 2018 lodged by respondent no.2/Mangala Pawar, the learned counsel argued that the FIR itself, even if the averments made therein are accepted, shows that in a fit of anger, appellant/accused nos.3 and 4 namely Madhukar Nagare and Anil Nagare gave casteist abuses and there was no intention on their part to humiliate the member of the Scheduled Castes. The learned counsel further argued that now on completion of investigation, the charge-sheet has been filed and statements of independent witnesses such as Jyoti Vasave - Gram Sevika, Vasant

Pawar – Peon, Ramesh Suryavanshi – Police Patil and Digambar Sonawane - Clerk of Gram Panchayat show that no such incident, as alleged, took place. Therefore, according to the learned counsel for appellants/accused, the learned Special Judge erred in rejecting the claim for anticipatory bail of appellants/accused. It is further argued that respondent no.2 belongs to another faction in the Gram Panchayat and she as well as her associates are continuously alleging several complaints against appellants/accused. My attention is drawn to such complaints at page nos.38 to 46 of the paper book.

3 As against this, the learned counsel appearing for respondent no.2 opposed the appeal by contending that appellant no.1 is indulging in several illegal activities and he is being externed under the provisions of the Maharashtra Police Act. The learned counsel further argued that the learned trial court has rightly considered the prima facie material to reject the application for anticipatory bail. He placed reliance on paragraph 8 of the impugned order.

4 The learned APP opposed the appeal by contending that there are specific allegations in respect of the offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, found in the FIR, and therefore, the appellants/accused are not entitled for anticipatory bail.

5 I have considered the submissions so advanced and perused the record made available including the copy of the charge-sheet which is shown to this court at the time of hearing of the matter.

6 Appellants as well as respondent no.2/ First Informant Mangala Pawar are residents of Village Varedarana. Appellant no.1 Sandip Nagare is the Sarpanch of the Village Panchayat whereas respondent no.2 Mangala Pawar is a member of the Gram Panchayat. The incident allegedly took place in the Gram Sabha convened on 26th April 2018. Appellant no.1 Sandip Nagare, Sarpanch, lodged report in respect of the incident on 26th

April 2018 itself, which has resulted in registration of Crime No.I-36 of 2018 for offences punishable under Sections 143, 147, 323, 504 and 506 of the Indian Penal Code against respondent no.2 Mangala Pawar and others. Averments in this FIR are to the effect that when proceedings of the Gram Sabha were conducted, respondent no.2/ First Informant Mangala Pawar questioned the Sarpanch by saying that there is illicit transport of sand from Godavari river and the Sarpanch is involved in this theft of sand. Appellant/accused no.1 Sandip Nagare, Sarpanch, further averred in this FIR that then being infuriated, Shantaram Pawar (husband of respondent no.2/First Informant Mangala Pawar) started slapping him. Subsequently, he was joined by others and they all assaulted him as well as his brothers and sisters-in-law as well as mother.

7 Subsequent to this FIR, but on the very same day i.e. on 26th April 2018, respondent no.2 Mangala Pawar lodged the subject FIR bearing Crime No.I-37 of 2018 for offences punishable under Sections 143, 147, 323, 504 and 506 of the Indian Penal

Code as well as under Sections 3(1)(r) and (s) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. She averred that after completion of the agenda of the Gram Sabha, when Sarpanch asked whether there is any subject, she told Sarpanch that sand from Godavari river is being supplied to other villagers, but villagers of Village Varedarana are not getting the sand. Thereupon, Sarpanch questioned her as to whether there is any evidence on this aspect. She told Sarpanch about the incident of apprehending tractor of one Bodake. Respondent no.2/First Informant Mangala Pawar further averred that then appellants/accused Madhukar Nagare and Anil Nagare got angry and started giving casteist abuses by saying that you people belonging to Bhil tribe became insolent. She alleged that appellant Madhukar Nagare assaulted her on head. All appellants/accused then assaulted her husband and brother-in-law by slapping them, abused them and threatened to kill them. It is further averred that appellants/accused persons threatened one Ravindra Sanap by alleging that he instigates the villagers to quarrel and supports persons belonging to Bhil tribe.

8 It is seen that with passage of time, the crime is fully investigated and charge-sheet bearing no.I-44 of 2018 came to be filed in the Special court at Niphad. The Investigating Officer has recorded statement of Gram Sevika Jyoti Vasave. As per her version, after agenda of the Gram Sabha was over, respondent no.2/First Informant Mangala Pawar asked the Sarpanch/appellant/accused no.1 Sandip Nagare as to why sand is not being supplied to poor people. Jyoti Vasave further stated that then she informed respondent no.2/First Informant Mangala Pawar that as such no written application is received. Then Gram Sabha was over. Statement of Jyoti Vasave shows that no such incident, as alleged by both parties, took place. Vasant Pawar, Peon of the Gram Sabha, has stated in similar manner that no such incident, as alleged by either of the parties, took place in the Gram Sabha. Ramesh Suryavanshi is Police Patil of the village. As per his version of the incident, over the issue of supply of sand to local villagers, there was scuffle between two groups in the Village Panchayat. They both slapped and fisted each other. This Police Patil has not stated anything about hurling casteist abuses to

anybody. Digambar Sonawane is the Clerk of the Gram Panchayat. His statement is in consonance with the version of Jyoti Vasave, Gram Sevika and Vasant Pawar, Peon of the Gram Panchayat. He has not spoken about hurling of casteist abuses by anybody.

9 It is clear from the charge-sheet that in the faction ridden of the Gram Panchayat of Village Varedarana, there appears to be heated argument in the Gram Sabha. Thereafter, both factions indulged in scuffle and slapping each other. This has resulted in counter FIR against each other by both factions. However, considering the fact that independent and natural witnesses to the incident, who happen to be Gram Sevak, Peon, Clerk and Police Patil of the village are not supporting the allegations regarding hurling of casteist abuses and so called intentional insult or intimidation with an intent to humiliate the member of the Scheduled Tribe, prima facie, the subject FIR appears to be containing allegations which are motivated. Therefore, in view of judgment of the Hon'ble Apex Court in the

matter of Dr.Subhash Mahajan vs. State of Maharashtra¹, bar of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not applicable to the case in hand. So far as other averments are concerned, considering the fact that the charge-sheet is already filed on completion of investigation, custodial interrogation of the appellants/accused is not warranted. In this view of the matter, I am of the view that the learned Special Judge, Niphad, erred in holding that the appellants/accused are not entitled for anticipatory bail because there is prima facie material on record that certain dispute has arisen between the complainant and the appellants/accused therein. The learned trial court erred in holding that there is prima facie case attracting bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In this view of the mater, the following order :

ORDER

- i) The appeal is allowed.

¹ 2018 ALL MR (Cri) 1773 (SC)

- ii) The impugned order dated 19th June 2018 passed by the learned Special Judge, Niphad, below Exhibit 1 in Criminal Miscellaneous Application (Bail) No.189 of 2018 is quashed and set aside.
- iii) The application for anticipatory bail moved by the appellants/accused is allowed.
- iv) In the event of arrest of the appellants/accused in Crime No.37 of 2018 registered with Police Station Saikheda, Nashik, at the instance of respondent no.2/First Informant Mangala Pawar, the appellants/accused be released on bail on their executing P.R.Bond in the sum of Rs.15,000/- each, and on furnishing surety in like amount, by each of them.
- v) The appellants/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 appellants/accused shall not commit any offence in future, failing which the prosecution shall have liberty to get this order cancelled.
- vii) The appellants/accused should not contact the respondent no.2/First Informant or her relative.
- viii) The appellant/accused should co-operate the Investigating Officer in further investigation, if any, of the crime in question.
- ix) The appeal is disposed off.

(A. M. BADAR, J.)