

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.843 OF 2018

1. Shri.Hemant Jagannath Gulvi,
Age : 35 years, Occu. : Agriculturist,

2. Shri.Umesh Jagannath Gulvi,
Age : 30 years, Occu.Agriculturist,

Both are residing at : At Post – Paygaon,
Tal. - Bhiwandi, Dist. - Thane. ... **Appellants**

V/s.

1. The State of Maharashtra,
(At the instance of Bhiwandi Taluka
Police Station, Thane)

2. Smt.Tara Sadashiv Jadhav,
Age : Adult, Occu. : Teacher,
R/at. Paygaon, Post Payebhiwandi,
Tal.Bhiwandi, Dist.Thane. ... **Respondents**

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Ms.Namarta S. Bobade, Advocate for the Appellants.

Mr.Shantanu R. Phanse, Advocate for original complainant.

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

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CORAM : A.M.BADAR J.

DATED : 4th OCTOBER 2018.

ORAL JUDGMENT :

Heard. Admit. Heard finally.

1 By this appeal, the appellants, who seems to be brothers, are challenging the Order dated 28/06/2018 passed by the Additional Session Judge, Thane on Anticipatory Bail Application No.1571 of 2018 thereby rejecting their claim for anticipatory bail in Crime No.I-73 of 2018 registered at Bhiwandi Taluka Police Station, District Thane for offences punishable under Sections 341, 504 and 506 read with Section 34 of the Indian Penal Code as well as under Sections 3(1)(r)(s), 3(2)(va), 3(1)(y) and 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity).

2 Heard the learned Counsel appearing for the appellant/accused. She argued that perusal of the FIR does not show that the incident takes place in public view. Though the alleged incident took place on 22/01/2018, the report thereof was lodged on 15/03/2018. The learned Counsel further argued that there is no averments in the FIR that the First Informant belongs to the Scheduled Caste or Scheduled Tribe and the act was committed by the appellants knowing the fact that the First Informant – Tara Sadashiv Jadhav belongs to either Scheduled Caste or Scheduled Tribe. She further argued that there is no averment to the effect that the appellants denied the First Informant's customary right of passage to a place of public resort.

Allegations regarding casteist abuses are omnibus and, therefore, the appellants are entitled for anticipatory bail.

3 The learned Additional Public Prosecutor opposed the appeal by contending that though the formal FIR came to be lodged on 15/03/2018, main report of the incident was lodged by the First Informant on 24/01/2018. The learned Additional Public Prosecutor further argued that the complaint dated 24/01/2018 as well as the FIR dated 15/03/2018 demonstrated commission of alleged offences and as such, in view of bar of Section 18 of the Atrocities Act, the appellants are not entitled for anticipatory bail.

4 I have also heard Shri.Phanse, the learned Counsel appointed to represent the respondent No.2 First Informant at the cost of the State. By relying on Judgment of the Honourable Apex Court in the matter of *Vilas Pandurang Pawar & Anr. v. State of Maharashtra & Ors.*¹, he argued that in view of bar of Section 18 of the Atrocities Act the appeal, as framed and filed, is not maintainable. In view of specific averments in the complaint made by the respondent No.2, Section 18 of the Atrocities Act, is applicable and therefore, the appeal deserves to be dismissed.

5 I have carefully considered the rival submissions and also perused the material placed on record as well as the case diary of the crime in question. Section 3(1)(r) of the Atrocities Act

¹ (2012) 8 Supreme Court Cases 795.

deals with intentional insult or intimidation with intent to humiliate a member of the Scheduled Caste or Scheduled Tribe in any place within public view. Section 3(1)(s) deals with abuses to any member of the Scheduled Caste and Scheduled Tribe by caste name in any place within public view. Section 3(1)(y) deals with offence of denying a member of Scheduled Caste or Scheduled Tribe a customary right of passage to a place of public resort and obstruction to such person preventing him from using or having access to a place of public resort. Section 3(2)(va) of the Atrocities Act deals with scheduled offences knowing the fact that the person against whom such offence is committed is a member of Scheduled Caste or Scheduled Tribe.

6 It is thus clear that basic ingredients of these offences alleged against the appellant/accused persons is to the effect that they must know the fact that they are committing the alleged act against a person belonging to the Scheduled Caste or Scheduled Tribe.

7 Similarly, there must be averment in the complaint or FIR that the appellants/accused are not belonging to the Scheduled Caste and Scheduled Tribe. In the matter of ***Gorige Pentaiah v. State of Andhra Pradesh & Ors.***¹ in paragraph 6 of the Judgment, the Honourable Apex Court has held thus :

1 (2008 12 SCC 531.

“.....According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused 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 appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basis 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.”

8 Perusal of the first complaint dated 24/01/2018 as well as FIR dated 15/03/2018 do not show that the First Informant claimed herself to be either a member of the Scheduled Caste or the Scheduled Tribe. Similarly, she had not made averments to the effect that the accused persons are not member of any Scheduled Caste or Scheduled Tribe. Averments in the FIR is to the effect that *adivasi* person become insolent. Similarly, it is averred that the appellant/accused have constructed permanent structure of bricks. There is no averment to the effect that the accused persons have denied to the member of the Scheduled

Caste or the Scheduled Tribe customary right of passage to a place of public resort. There is no averment to the effect that knowing the fact that the First Informant or her relatives are belonging to the Scheduled Caste or Scheduled Tribe, the scheduled offences are committed. The averments in the FIR are neither disclosing any intentional insult or intimidation with an intent to humiliate members of the Scheduled Caste or Scheduled Tribe or abusing such members by caste name. The term '*adivasi*' cannot be said to be a term having meaning assigned to it under Clause (24) and (25) of Article 366 of the Constitution of India.

9 The complaint dated 24/01/2018 and the FIR dated 15/03/2018 is not mentioning the fact that the incident in question took place within a public view.

10 In the light of foregoing discussion, bar of Section 18 of the Atrocities Act is not applicable to the case in hand. The appeal, therefore, deserves to be allowed. The impugned Order rejecting the application for anticipatory bail is not sustainable in the eyes of law. As such, the Order :

ORDER

- (i) The appeal is allowed.
- (ii) The impugned Order dated 28/06/2018 passed by the learned Additional Sessions Judge, Thane in Anticipatory Bail Application No.1571 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 their arrest in Crime No.I-73 of 2018 registered with Bhiwandi Taluka Police Station, Bhiwandi at the instance of respondent No.2 Tara Sadashiv Jadhav, the appellants/accused be released on bail on their executing P. R. Bond of Rs.15,000/- each and on furnishing surety in the like amount by each of them.
- (v) As a condition of this Order, the appellants/accused shall not tamper the prosecution evidence.
- (vi) As a condition of this Order, the appellants/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 appellants/accused has to attend the concerned Police Station as and when directed by the Investigating Officer for the purpose of investigation.
- (vii) The Appeal is disposed of according.

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

Gaikwad RD

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