

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.926 OF 2018

1. Bharatbhai Amlabhai Patel,
Aged : 38 years, Occupation : Business,
2. Hariyabhai @ Ajaykumar Amlabhai Patel,
Aged : 42 years, Occupation : Business,
3. Javed Allahrakh Warsi,
Aged : 30 years, Occupation : Business,
All R/at : Charoti Naka, Dahanu, Palghar.... **Appellants**
V/s.
1. State of Maharashtra,
(At the instance of Kasa Police Station,
Palghar)
2. Suresh Shankar Chavhan,
Age : 60 years, Occupation : Retired,
R/at. : Kasa Police Line, Dahanu,
Palghar ... **Respondents**

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Mr.S.V.Marwadi i/b. Ms.Kushbu Marwadi, Advocate for the Appellants.

Mrs.M.R.Tidke, APP for the Respondent No.1/State.

Mr.Nasir Mohamed i/b. Mr.Vinod P. Sanghvikar, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 22nd OCTOBER 2018.

ORAL JUDGMENT :

1 Heard.

2 Admit.

3 Heard finally considering the fact that the appeal is directed against rejection of the application for anticipatory bail filed by the appellants/accused in Crime No.109 of 2018 registered with Kasa Police Station, Dist. Palghar for offences punishable under Sections 447, 504 and 506 of the Indian Penal Code as well as under Sections 3(1)(f),(r) and (s) of the Scheduled Castes and Scheduled Tribes Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity).

4 The learned Counsel appearing for the appellants /accused argued that neither the FIR nor the complaint which was lodged first in point of time mentions that the incident in question took place in public view. It is further argued that the word allegedly used by accused Nos.2 and 3 is "*bhusat*", which cannot be termed as caste name because the FIR itself shows that the First Informant claimed to be belonging to Hindu-Paradhi, which is a scheduled tribe. Therefore, according to the learned Counsel for the appellants, bar of Section 18 is not applicable to the case in hand.

5 The learned Counsel appearing for respondent No.2 argued that the appellants entered in the land belonging to the respondent No.2/First Informant, who claims to be belonging to scheduled tribe and committed the offence in public view as seen from the spot panchanama. He argued that Section 18A incorporated in the Atrocities Act create bar and Section 438 of the Code of Criminal Procedure is not applicable to the offence punishable under the provisions of Atrocities Act. The learned Counsel argued that there are eye-witnesses to the incident. He submitted that in the matter of *Manju Devi v. Onkarjit Singh Ahluwalia @ Omkarjeet Singh & Ors.*,¹ the Honourable Apex Court has considered the effect of untouchability on the social attitude. It is argued that as per Judgment in the matter of *Vilas Pandurang Pawar & Anr. v. State of Maharashtra & Ors.*,² Section 18 of the Atrocities Act create bar and as such anticipatory bail cannot be granted in such offence.

6 I have carefully considered the rival submissions and also perused the impugned Order dated 12/07/2018 passed by the learned Additional Session Judge, Palghar in Bail Application No.128 of 2018 thereby rejecting the application for anticipatory bail moved by the appellants/accused.

7 According to the prosecution case, respondent No.2

1 (2017) 13 Supreme Court Cases 439.

2 (2012) 8 Supreme Court Cases 795.

Suresh Chavan, who lodged the FIR on 28/06/2018 belongs to Hindu-Paradhi – a scheduled tribe. He had taken three gunthas land from Gat No.32 of Mauje Kasa on 99 years lease from its owner on 31/05/1995. On 07/05/2018 all appellants came to that land and removed cement poles by JCB machine. When he had been there to stop that work, the appellants/accused persons abused them by saying '*bhusat*' and uttering that they do not pay heed to '*adivasi-bidiwvasi*'. The respondent No.2/First Informant claimed that at that time his elder son Ashish came. In his presence also, the appellants/accused persons gave threats to him. At that time, his younger son Nilesh and his friend also came on the spot.

8 The first complaint was made by the respondent No.2/First Informant to Assistant Police Inspector on 19/05/2018. The averments in that first complaint are similar in nature. It is averred that the appellants/accused abused the respondent No.2/First Informant in presence of his sons and friend of his son.

9 Perusal of the first complaint as well as the FIR does not show that the respondent No.2/First Informant had made any averment therein to the effect that the appellants herein are not belonging to scheduled caste or scheduled tribe. In paragraph 6 of its Judgment in the matter of ***Gorige Pentaiah v. State of Andhra Pradesh & Ors***¹ the Honourable Apex Court has held thus :

¹ (2008) 12 Supreme Court Case 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.”

10 Perusal of the FIR goes to show that the abusive word allegedly used was 'bhusat' which is having no nexus to the tribe 'Paradhi' to which First Informant claims to be belonging to. Neither the first complaint nor the FIR shows that some independent public persons were present at the time of commission of the alleged offence.

11 In the matter of *Pradnya Pradeep Kenkare & Ors. v. State of Maharashtra*¹ following are the observations in paragraph 8 :

1 2005(3) Mh.L.J. 368.

“8The 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.”

12 In the matter of ***Manju Devi (supra)*** in paragraph 17, the Honourable Apex Court has held thus :

“17. Though the Constitution of India abolishes ‘untouchability’ but in view of the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the SC/ST Act. The offences which are enumerated under Section 3 of the SC/ST Act are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.”

The observations of the Honourable Supreme Court, as such, shows that the offence under the Atrocities Act constitutes a separate class.

13 In the matter of ***Vilas Pawar (supra)***, in paragraph 10 of the Judgment, the following are the observations :

“10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it *prima facie* finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

14 Section 438 of the Code of Criminal Procedure is not applicable to the offences under the Atrocities Act in view of provisions of Section 18 thereof. However, such bar is applicable only when *prima facie* case under the Atrocities Act is made out. In the case in hand, the FIR does not disclose that the appellants/accused are not belonging to the scheduled caste or scheduled tribe. The incident, as seen from the complaint as well as the FIR, did not take place within public view in presence of independent public person. The word '*bhusat*' cannot be termed as abuses in the name of caste, particularly when the First Informant claims to be belonging to '*paradhi*' - a scheduled tribe.

15 In this view of the matter, bar of Section 18 of the Atrocities Act is not applicable to the case in hand. Thus, the learned trial Court erred in holding that the appellants/accused are not entitled to anticipatory bail. Hence, the Order :

ORDER

- (i) The Appeal is allowed.
- (ii) The impugned Order dated 12th July 2018 passed by the learned Additional Sessions Judge, Palghar below Exhibit 1 in Bail Application No.128 of 2018 so far as it relates to rejection of application for anticipatory bail moved by the appellants/accused in the subject crime is quashed and set aside.
- (iii) The application for anticipatory bail moved by the appellants/accused in the subject crime is allowed.
- (iv) In the event of their arrest in the crime in question, the appellants/accused are directed to 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 should 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.

(vi) As a condition of this Order, the appellants/accused should attend the Investigating Officer as and when directed and they should co-operate the Investigating Officer for the purpose of investigation.

(vii) The Appeal is disposed of accordingly.

(A.M.BADAR J.)