

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.794 OF 2018

Vaishnavi w/o Milind Jogalekar
Age 45 years, Occu. Social Worker,
R/o SOS Children village,
New Nanded Naka, Latur,
Taluka and District Latur

...APPELLANT

VERSUS

1. The State of Maharashtra,
through Police Inspector,
Vivekanand Police Station,
Latur, Tq. & Dist. Latur.
2. Sunil Bapu Mandale,
R/o Bhabhalgaon Road,
Swapnapurti Apartment,
House No.104,
Vivekanand Chowk Police Station,
Latur, Tq. & Dist. Latur.

...RESPONDENTS

.....
Shri V.D. Salunke, Advocate for appellant
Shri S.B. Joshi, A.P.P. for respondent No.1.
Shri M.M. Parghane, Advocate for respondent No.2
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**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

Date of reserving judgment : 22nd February, 2019
Date of pronouncing judgment : 22nd April, 2019

JUDGMENT (PER : R.G. AVACHAT, J.):

1. This is an appeal, under Section 14-A of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989 (for short, the Act). The appellant herein takes an exception to the order dated 26.10.2018, passed by the Special Court constituted for trial of offences under the Act, rejecting her application for anticipatory bail.

2. The respondent No.2, on 26.9.2018, filed First Information Report, being Crime No.318/2018, with Vivekanand Police Station, Latur, for offences punishable under Section 3(U) (r) of the Act, and under Sections 504, 506 of the Indian Penal Code. The allegations in the F.I.R. are as follows :

The respondent No.2 (first informant) has been serving as a Senior Assistant, Family Strengthening Programme, run by "Save Our Soul" (for short, SOS), an International Non-Governmental Organisation (N.G.O.). The first informant claims to have belonged to Scheduled Caste. The appellant has been serving as a Director, SOS at Latur. Since her day of joining at Latur, the appellant started harassing the first informant only on account of he being member of the Scheduled Caste. The appellant would ask the first informant to get himself examined by Psychiatrist. She would also threaten him of dismissing from service. In official meetings, the appellant would intentionally undermine the first informant over his lifestyle. The appellant is also alleged to have had asked the first informant to discontinue portraying a photo-frame of Bharat Ratna Late Dr. Babasaheb

Ambedkar. The appellant is also alleged to have made various adverse reports against the first informant to the higher-ups. The first informant claimed to have worked to the best of his ability and completed the target of the work. Still, on the report of the appellant, annual increment of the first informant has been withheld.

3. It is further alleged in the F.I.R. that, the appellant has been asking the first informant to resign from the service. She has also suggested the first informant to commit suicide. It is further alleged that, on the basis of a false and frivolous report submitted by the appellant, the first informant has been transferred to Anantpur, District Faridabad (Haryana) with a direction to join forthwith.

4. In short, the allegations in the F.I.R. are that, the appellant, in her capacity as superior officer of the first informant, harassed and ill-treated him only on account of he belongs to Scheduled Caste.

5. The appellant moved the Special Court for grant of anticipatory bail. The Special Court rejected her application mainly on the ground of newly introduced Section 18-A of the Act. According to the Special Court, the provisions of Section 438 of the Criminal Procedure Code are not applicable in relation to any case under the Act.

6. Shri V.D. Salunke, learned counsel for the appellant would submit that, the appellant is highly qualified. Before joining the service with the SOS, the appellant had worked with various Government and non-Government organisations. She has many a time been felicitated and/or awarded with rewards for her dedicated work. According to the learned counsel, the first informant hails from Latur district. In 2012, he was transferred to Latur. The first informant arrogantly behaves. He does not observe discipline. The first informant has no good relations with colleagues (staff) and higher-ups. He has been unnecessarily making false complaints against the appellant. An enquiry was, therefore, set up. The Committee ultimately found that charges levelled by the first informant were baseless and frivolous. According to learned counsel, the departmental enquiry was initiated against the first informant. Charges levelled against him have been duly proved. According to learned counsel, the allegations in the F.I.R. are motivated. If the appellant is arrested on the basis of such false and motivated allegations, it would nothing short of depriving her fundamental right to life and liberty. The appellant would, therefore, be entitled for grant of anticipatory bail.

7. The learned A.P.P. would, on the other hand, submit that the Special Court has rightly rejected the appellant's

application for anticipatory bail. The allegations in the F.I.R., prima facie, attribute the applicant with the offence under the Act.

8. The learned counsel for the first informant made submissions, reiterating the allegations in the F.I.R. The learned counsel took us through the affidavit filed by the respondent, opposing the appellant's prayer.

9. In case of Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra & anr. Reported in [(2018) 6 SCC 454], the Hon'ble Supreme Court, observed :-

“55. In the present context, wisdom of legislature in creating an offence cannot be questioned but individual justice is a judicial function depending on facts. As a policy, anticipatory bail may be excluded but exclusion cannot be intended to apply where a patently mala fide version is put forward. Courts have inherent jurisdiction to do justice and this jurisdiction cannot be intended to be excluded. Thus, exclusion of court's jurisdiction is not to be read as absolute.

56. 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. 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 blackmailed with the threat of a false case being registered under the Atrocities Act, without any protection of law. This cannot be the scenario in a civilised society. Similarly, even a non-public servant can be blackmailed 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.

57. Applying the above well-known principle, we hold that the exclusion of Section 438 of 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.”

10. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 introduced

Section 18-A in the Act. Section 18-A reads as under :

“18A (1).
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(2) The provisions of Section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.

11. Recently, the Division Bench of this Court, in case of **Lahu s/o Vitthalrao Bhosale Vs. The State of Maharashtra & anr.** (Criminal Appeal No.194/2019). has held :-

“21) In view of the discussion made above, this Court holds that even after the amendment made in the year 2018 by which the provision of section 18-A came to be added, there is the power to Sessions Court and High Court to consider anticipatory bail application even if the crime is registered for offences punishable under the Act. At the time of consideration of such application, the Court will have to consider as to whether there is accusation of having committed the offence under the Act and as to whether there is material to make out prima facie case for commission of such offence. This Court wants to add that even the police officer is expected to give thought at the time of registration of the crime under section 154 of

Cr.P.C. that whether the allegations constitute the offence under the Act. Only because the first informant belongs to scheduled tribe or scheduled caste, the crime cannot be registered for offence punishable under the Act and offence can be registered under the Act only if there are ingredients of the offences punishable under the Act in the accusation.”

Moreover, the High Court of Calcutta, in C.R.M. No.8302/2018 (**Debjyoti Bhattacharyya Vs. The State of West Bengal**), has observed :-

“12. The legal position is not that merely because an F.I.R. refers to a provision under the Act or the complaint mentions Section 3 or Section 4 of the Act without the complaint making out any ingredients of an offence under either provision, the operation of Section 438 of the Code would stand automatically suspended. A petition under Section 438 of the Code may still be carried by the accused to the appropriate forum whereupon such forum will assess whether the accusation constitutes an offence under the said Act. Once such question is answered in the affirmative, the High Court or the court of sessions will proceed no further with the petition as the embargo under Section 18 of the Act would have fallen into place. But if the question is answered in the negative, Section 18 of the Act no longer remains a bar or

stands in the way of the petition under Section 438 of the Code being considered on merits.”

Furthermore, the High Court of Karnataka, in case of **Sri Nagesh @ Nagesh Reddy s/o Venkatareddy Vs. The State of Karnataka**, (Criminal Petition No.4306/2018, has held :-

“Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act is not a bar for granting anticipatory bail if circumstances are as such that caste based attack is not made out. Section 18(A) of the Scheduled Castes and Scheduled Tribes (Prevention of atrocities) Act only says that there is no need to hold a preliminary enquiry for registration of F.I.R. and that the investigation officer need not require approval for arrest of any persons. Section 18(A) has not taken away the powers of the Court to grant anticipatory bail, if the complaint does not disclose caste based attack”

12. Moreover, the Division Bench of this Court in case of **State of Maharashtra Vs. Shashikant Eknath Shinde** reported in **2013 All M.R. (Cri) 3060**, has observed :-

“It may not be out of place to mention that day in and day out we come across various

cases wherein the provisions of the Atrocities Act are misused. . . . We have no hesitation in saying that in many of the instances, it was found that the complaints were filed only to settle score with their opponents, after defeat in the Gram Panchayat elections. complaints which do not have any criminal element causes great hardships, humiliation, inconvenience and harassment to the citizens. For no reasons, the reputation of the citizens is put to stake . . .”

The Division Bench was pleased to quash and set aside the F.I.R. relating to offences punishable under Sections 3(1) (ix) & (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, as it found from the allegations in the F.I.R. that no such offence was made out.

13. In our view, in a case if allegations are prima facie found to be motivated and false, this Court is obliged to protect personal liberty.

14. SOS is an International N.G.O. The appellant has been working as Director since 2007. The first informant has also been working as Senior Assistant. The first informant came to be transferred from Alibag to Latur in 2012. Latur is first informant's home district. It appears that, since his joining at Latur, relations

between the appellant and the first informant turned unfriendly. The appellant had a supervisory control over the first informant. She found his behaviour indisciplined. She had, therefore, given him understanding. Admittedly, the first informant had been subjected to a departmental enquiry. It appears that, the charges framed in the departmental enquiry against the first informant have all been proved. On 13.9.2018, the first informant has been transferred from Latur to Anantpur, District Faridabad (Haryana). Needless to mention that the post held by the first informant is inter-State transferable. The First Information Report has been lodged on 25.9.2018 i.e. within 12 days. The allegations in the F.I.R. suggest the first informant to have grievance against the appellant since his joining at Latur. True, there is some communication made by the first informant, which suggests that he had made complaint against the appellant to the concerned Police Station way back in November 2017. The allegations in the F.I.R. are that the appellant harassed and ill-treated the first informant only on the ground of he having been Scheduled Caste person. It is very easy to make such allegations. It is reiterated that, the record, on the other hand, indicates the first informant faced departmental enquiry, wherein he has been found guilty of misconduct. He has, therefore, been transferred. The F.I.R. indicates the same to have been filed with a view to see the appellant is arrested. The offence alleged to have been

committed by the appellant is solely depend upon the version of the first informant. Possibility of the F.I.R. having been lodged for extraneous reasons cannot be ruled out. No custodial interrogation of the appellant is warranted. If the appeal is not allowed, it would affect personal life and liberty of the appellant. In our view, therefore, the appeal deserves to be allowed.

15. For the aforesaid reasons, the appeal succeeds. The appeal is disposed of in following terms :-

ORDER

- (i) The criminal appeal is allowed.
- (ii) Impugned order dated 26.10.2018, passed by learned Special Court, Latur in Criminal Misc. Application (Bail) No.369/2018 is quashed and set aside.
- (iii) The Criminal Misc. Application (Bail) No.369/2018 filed by the appellant is allowed.
- (iv) In the event of arrest of the appellant in connection with Crime No.318/2018, dated 26.9.2018, registered at Vivekanand Chowk Police Station, Latur under Section 3(U) (r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and under Section 504, 506 of the Indian Penal Code, she be released on her executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with surety bond in the like amount.

- (v) The appellant shall co-operate with the investigation.
- (vi) Bail before the Special / Trial Court.

R.G. AVACHAT
JUDGE

S.S. SHINDE
JUDGE

fmp/