

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 982 OF 2018

Meera M. Adagale

... Appellant

Vs.

State of Maharashtra

... Respondent

...

Mr. Ranjeet M. Pawar – Advocate for the Appellant.

Ms. Bhagyashri R. Mangale – Advocate for the Respondents 2 & 3

Mrs. J. S. Lohakare, APP for the Respondent – State

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 06th June, 2019.

P.C.

. The appellant is the original complainant in Crime No. 585 of 2018 filed at Yawat Police Station, Pune District. The complaint was against the 2nd and the 3rd Respondents, for the offences under Sections 341, 323, 504 and 506 of IPC, read with Sections 3 (1) (r) (s) and 3 (2) (v) (a) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The respondents 2 and 3, as the accused, approached the Additional Sessions Judge, Baramati, and obtained an anticipatory bail on 12.07.2018.

2) Aggrieved, the appellant-complainant has invoked Section 14 of the SC & ST Act and filed this Criminal Appeal. As the appeal stood pending before this Court, there occurred certain developments. The police filed the chargesheet on 07.09.2018 and, at that time, the Special Court also granted regular bail to the Respondents 2 and 3.

3) Shri Ranjeet Pawar, the learned counsel for the appellant, contends that there is an express statutory bar under Section 18 of the Act. The bar is against the accused, charged with offences under the SC & ST Act, from invoking Section 438 of CrPC and securing an anticipatory bail. About the developments pending this appeal, Shri Pawar contends that the impugned order is illegal *per se* and the later developments could not turn it legal. Once the adjudicating authority lacked power, the order he passed renders itself *coram non judice* — *nullity*.

4) I have pointed out to the learned counsel the fact that the respondents has already secured regular upon the police's filing the chargesheet. But the learned counsel has still maintained that a void order must go, at all costs. The respondents can once again, according to him, apply for the regular bail and secure it. To hammer home his contention, Shri Pawar has relied on *R. Madhusudhan v. State of Karnataka*, 2017 (14)

SCC 233, and *Vilas Pandurang Pawar v. State of Maharashtra*, 2012 (8) SCC 795.

5) On the other hand, Smt Bhagyashri Mangale, the learned counsel for the respondents 2 and 3, contends that the whole exercise now the appellant wants the Court to undertake is an exercise in futility. According to her, even if the impugned order were set aside, it would only result in duplication of judicial work.

6) To elaborate, Smt. Mangale submits that as the chargesheet has already been filed and regular bail already given, the anticipatory bail given earlier no longer remains alive. With this order's disappearance, if it were; the respondents only have to go through the rigmarole of approaching the Special Court and securing another order. It is, thus, nothing but duplication of judicial work. So she urges this Court to dismiss the Criminal Appeal.

7) Heard the learned counsel for the petitioner and the learned counsel for the respondents 2 and 3, besides the learned advocate for the Additional Public Prosecutor.

8) Let us see what Section 18 of the Act proscribes: "Nothing in Section 438 of the Code shall apply in relation to any case involving the

arrest of any person on an accusation of having committed an offence under this Act.”

9) Indeed, the statutory mandate is unmistakable. Section 18 of the SC & ST Act disbars any application under Section 438 of Cr. PC, once the crime involves the provisions of the SC & ST Act. But here much water has flowed under the judicial bridges. Pending this appeal, the police investigated the crime and filed a chargesheet. Now, both the learned counsel inform the Court that the Special Court, at the time of its taking the chargesheet on file, granted regular bail to the respondents, as well.

10) Before adjudicating on the impact of the regular bail the respondents secured pending this appeal, I may as well examine the precedents the appellant’s counsel cited at the Bar.

11) *Madhusudhan* is a converse case. To begin with, in that case, the Trial Court granted anticipatory bail to the accused in a crime under the SC & ST Act. But the High Court reversed the Trial Court’s decision, keeping in view Section 18 of the Act. When the matter was taken to Supreme Court, while admitting, the Court stayed the High Court’s order. So the accused continued to have the protection granted by the trial court.

12) By the time the Supreme Court took up the matter, as noted by it, the investigation was completed and the chargesheet filed. So,

Madhusudhan, on facts, has held that the appellants can “appear before the trial court and seek regular bail.” Thus, *Madhusudhan*, I am afraid, has not explicitly dealt with, nor has laid down any proposition on, the influence of Section 18 of the Act over Section 438 of Cr.PC. That issue has remained *sub silentio*, so to say.

13) In *Vilas Pandurang Pawar*, the Supreme Court acknowledges that Section 18 of the Act creates a bar against an accused’s invoking Section 438 of the Code. But the Court, pertinently, observes that “duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint ... the accused persons are not entitled to anticipatory bail.”

14) *Vilas Pandurang Pawar* further notes that when an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail “unless it prima facie finds that such an offence is not made out.” It does caution that a “court is not expected to indulge in critical analysis of the evidence on record.” Then, on facts, *Vilas Pandurang Pawar* observes that in the light of the specific averments in the complaint, Section 18 of the SC/ST Act applies to the case.

15) *Vilas Pandurang Pawar*, I reckon, has not laid down a proposition that to all crimes registered under the provisions of the SC & ST Act, Section 438 of CrPC stands excluded. On the contrary, the Court stressed that “duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out.” It has also said that no court shall entertain an application for anticipatory bail “unless it prima facie finds that such an offence is not made out.”

16) Confined to the facts of this case, I may observe that with or without justification the Special Court entertained the accused’s application for anticipatory bail. And that order of bail was appealed against. As the appeal stood pending, the police completed the investigation and filed a chargesheet. Had things stopped there, this Court, now, would have required the accused to go back to the Special Court and secure a regular bail after their surrendering before either the police or the Special Court.

17) But both the counsel submit that when the police filed the chargesheet, the accused secured a regular bail. So this appeal, as I see, has become infructuous at least by efflux of time. The Court’s setting aside the impugned order as demanded by the appellant serves no practical purpose.

The investigation completed and regular bail granted, any direction to the respondents to approach—once more—the Special Court for regular bail is an avoidable judicial rigmarole.

I, therefore, close this appeal as requiring no further adjudication.

(DAMA SESHADRI NAIDU, J.)