

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.748 OF 2017

Dnyaneshwar Bhikaji Wagh,

Age : 48 years, Occu.: Agriculturist,

Add – At Post – Dugaon,

Taluka & District Nashik

... **Appellant**

V/s.

1. The State of Maharashtra

2. Sangita Bharat Gaikwad,

Age : 27 Years, Occu. Farmer,

R/o.Dugaon, Manoli Road,

Taluka & District Nashik.

... **Respondents**

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Mr.Hrashad E. Palwe, Advocate for the Appellant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent No.1/State.

Mr.Ganesh Bhujbal, Appointed Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 12th FEBRUARY 2019.

ORAL JUDGMENT :

1 By this appeal, the appellant/accused Dnyaneshwar Wagh is challenging the Order dated 18/07/2017 passed by the Special Judge, Nashik below Exhibit 1 in Criminal Misc. (Bail) Application No.951 of 2017 thereby rejecting the claim of the

appellant/accused for anticipatory bail in Crime No.I-55 of 2017 registered at the instance of respondent No.2 Sangita Gaikwad for the offences punishable under Sections 324, 323, 504 and 506 read with Section 34 of the Indian Penal Code as well as under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for the sake of brevity) at Nashik Taluka Police Station.

2 Heard the learned Counsel appearing for the appellant/accused and the learned Additional Public Prosecutor for the respondent/State.

3 Admit.

4 Heard finally considering the fact that the appeal is pertaining to rejection of the claim of the appellant/accused for anticipatory bail.

5 The learned Counsel appearing for the appellant/accused Dnyaneshwar argued that even if the FIR is considered to be correct, no derogatory words are used by the appellant/accused. By relying on the agreement dated 10/07/2012 (page 13 of the paper-book), the learned Counsel argued that period of lease was from 10/07/2012 to 09/07/2017 and as such, on the

date of lodging the FIR, the accused persons were in lawful possession of the lease field. Averments to the effect that their possession is unlawful is *per se* false. Therefore, the appellant/accused is entitled for anticipatory bail.

6 The learned Additional Public Prosecutor opposed the application by contending that in view of bar of Section 18 of the Atrocities Act, the appellant/accused is not entitled for anticipatory bail.

7 Shri.Bhujbal, the learned Advocate appointed to represent the respondent No.2 at the cost of the State opposed the appeal by contending that appellant/accused had intentionally insulted and abused the First Informant as well as her family members within public view in order to humiliate them and, therefore, they are not entitled for anticipatory bail.

8 I have considered the submissions so advanced and perused the papers of investigation made available.

9 The FIR of the subject crime is lodged by respondent No.2 Sangita Gaikwad on 04/07/2017 by alleging that she belongs to Hindu Mahadev Koli tribe. It is averred by her that land owned by the respondent No.2 and his family members bearing Gat No.42 from village Manoli was leased out to accused Vitthal Bhikaji

Wagh for a period in between 19/04/2010 to 19/04/2015. After period of this lease, the possession was not returned to the prosecuting party. When her mother-in-law Meerabai requested the accused persons to hand over the possession of the land, accused persons namely Vitthal, Amol and Pappu came armed with sticks and assaulted her mother-in-law Meerabai. They abused her. It is further averred that appellant/accused Dnyaneshwar had abused the prosecuting party in filthy language and uttered that “ तुम्ही कोळपटे मातले काय, तुमचा बेत पहावा लागेल ” intending to insult by abusing members of scheduled tribe.

10 It is seen that agreement dated 10/07/2012 was executed by Meerabai Gaikwad and Vishnu Gaikwad leasing out field Gat No.42 to Vitthal Wagh for a period in between 10/07/2012 to 09/07/2017. As such, on the date of lodgment of the First Information Report on 04/07/2017, accused persons were not in wrongful occupation and cultivation of the subject filed. So far as appellant/accused Dnyaneshwar is concerned, the allegation against him is to the effect that he abused members of the scheduled tribe and had insulted them with an intention to humiliate them. Perusal of the FIR does not show that the so called incident took place in any place within public view.

11. The words 'in any place within public view' came to be interpreted by the leaned Division Bench of this Court in the

matter of *Pradnya Pradeep Kenkare & Ors. v. State of Maharashtra*¹. Relevant portion of paragraph 8 of that Judgment reads thus :

“8.....The 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

1 MANU/MH/0359/2005.

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 As it is not seen that the alleged incident of intentionally insulting or abusing took place in a place within public view, *prima facie*, no case for offence under the Atrocities Act is made out. Consequently, bar of Section 18 of the Atrocities Act is not applicable to the case in hand. So far as other offences are concerned, custodial interrogation of the appellant/accused is not warranted. Therefore, the Order :

ORDER

- (i) The Appeal is allowed.

- (ii) The impugned Order dated 18/07/2017 passed by the Special Judge, Nashik below Exhibit 1 in Criminal Misc. (Bail) Application No.951 of 2017 thereby rejecting the claim of the appellant/accused for anticipatory bail in Crime No.I-55 of 2017 registered at the instance of respondent No.2 Sangita Gaikwad is quashed and set aside.

- (iii) The Criminal Miscellaneous Bail Application bearing No.951 of 2017 moved by the appellant/accused for grant of anticipatory bail is allowed.
- (iv) In the event of arrest of the appellant/accused in Crime No. I-55 of 2017 registered with Nashik Taluka Police Station at the instance of respondent No.2 Sangita Gaikwad, the appellant/accused be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (v) As a condition of this Order, the appellant/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 appellant/accused should not repeat commission of similar offences in future.
- (vii)The appellant/accused to cooperate the Investigation Officer in investigation of the crime in question.
- (viii)The Appeal stands disposed with this Order.

(A.M.BADAR J.)