

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

Criminal Application (APPA) No. 275 of 2020

In

Criminal Appeal No. 241 of 2020

Shrawan s/o Jaleshwar Prasad Vs. State of Maharashtra and another

With

Criminal Appeal No. 237 of 2020

Mohammad Anwar Vs. State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri Uday Dable, Advocate for the Appellants.

Ms. T.H. Udeshi, APP for the Respondent/State. (in Criminal Appeal No.241/2020)

Shri B.M. Lonare, APP for the Respondent. (in Criminal Appeal No.237/2020)

CORAM : S.M. MODAK, J.

DATE : 7th AUGUST, 2020.

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The first informant was not joined as a party-respondent. He has lodged the complaint not in an individual capacity but as public servant. Hence, the matter is taken up for hearing by consent.

3. Heard both the sides in Criminal Appeal Nos. 241 of 2020 and 237 of 2020.

4. In these appeals, this Court is dealing with an offence registered with Police Station, Kuhi on 7th June, 2020. These appellants along with two others have obstructed the complainant in discharge of his public duty and threatened him and that is why initially, an offence under Sections 143, 353, 506 of the Indian Penal Code was registered. Later on, on 13th June, 2020 an offence under

Section 3 (1)(r)(s) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was added. Always there is a background to any incident. The prosecution wants to give a particular background and the appellants want to give a different background.

5. There is an allegation of transport of sand illegally on behalf of the prosecution (but no offences against the appellants are pointed out. It is on the basis of the reply prepared. It is submitted that it may be disclosed during investigation also). Whereas the appellants claim that during this COVID era, the Inspectors of R.T.O. Department are unnecessarily harassing the truck drivers.

6. It is true that the Revenue Officers as well as Police Officers have every right to take action if the sand is transported illegally. Sometime under the garb taking preventive action, there are instances of excesses on behalf of the Government Servant. This is the general opinion and not the observation in this particular case.

7. There is a complaint made on behalf of the Vidarbha Local Truck Owners Welfare Association dated 20th May, 2020 addressed to the Collector signed by the appellant – Shrawan Kumar. He has protested about the corrupt ways adopted by the Officers of R.T.O. Department in checking the vehicles. There is a complaint made specifically against one R.T.O. Officer – Bajrang Khatmate. The offence in this case is registered on the complaint of one Rajesh Baburao Borale employee of R.T.O. Department. After filing this complaint, the incident in question has taken place on 7th June, 2020.

8. My attention is brought to the fact that on 7th June, 2020 offences under S.C./S.T. Act were not added. My attention is also

brought to the report filed before the Sessions Court and particularly absence of reference of caste abuses given by these two appellants. I have perused it. It is true that caste abuses are referred specifically against the co-accused – Javed Pathan (who is not before us).

9. When contention is taken that appellants have not attended the spot, my attention is drawn towards para No.5 of the reply in Criminal Appeal No.241 of 2020. During investigation, call details report of the accused were collected and it shows the presence of the accused at the spot.

10. I have perused the orders passed by the Trial Court thereby rejecting the anticipatory bail. The Trial Court has specifically referred about the abuses given by co-accused Javed Pathan. The Trial Court found that custodial interrogation is required.

11. It is true that there is a bar for invocation of Section 438 of Code of Criminal Procedure in offences under S.C./S.T. Act. If Court finds that offence is not disclosed *prima facie*, then only bar is lifted. This Court has already granted interim anticipatory bail to these appellants.

12. It is very well true that the place at which the alleged incident took place is public place. I am not going into that issue but I am impressed by the fact that the first informant who is a public servant in his complaint has not referred to abuses on account of caste. This omission at this stage, is sufficient enough to take up *prima facie* view that the bar under Section 18 A of S.C./S.T. Act is to be lifted.

13. I am inclined to confirm the interim anticipatory bail. The

Trial Court has not considered these facts and the impugned order needs to be set aside. Hence, the following is passed:-

ORDER

- i. The appeals are **allowed**.
- ii. The order dated 18th June, 2020 is set aside. The interim bail granted by this Court on 14th July, 2020 in Appeal No.241 of 2020 and interim order dated 10th July, 2020 in Appeal No.237 of 2020 hereby confirmed.
- iii. The appellants to continue the attendance till filing of charge-sheet and to cooperate the Investigating Agency as and when required.
- iv. The appeals are disposed of.

Criminal Application (APPA) No. 275 of 2020

In view of the disposal of the criminal appeal, this application praying for grant of time to file the certified copy of order dated 18.06.2020 does not survive. It is disposed of.

14. This order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE