

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

CRIMINAL APPEAL NO.16 OF 2021

Shivdas s/o Kachruba Bidgar

... **APPELLANT**

VERSUS

The State of Maharashtra & anr.

... **RESPONDENTS**

.....
Mrs. P.G. Sontakke, Advocate holding for
Shri G.K. Sontakke, Advocate for appellant
Shri S.N. Kendre, A.P.P. for respondent No.1.
Shri M.V. Narwade, Advocate for respondent No.2.
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CORAM : R. G. AVACHAT, J.

DATE : 29th JUNE, 2021

ORDER:

The Additional Sessions Judge-4, Parbhani, vide order dated 19/12/2019, rejected the application preferred by the appellant for grant of anticipatory bail in connection with offence punishable under Sections 143, 147, 341, 342, 294, 452, 323, 504, 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the Act).

2. Heard learned counsel for the appellant. Perused the First Information Report (F.I.R.) and the related papers. Read the impugned order.

Learned counsel for the appellant would submit that, there is delay of over three weeks in lodging the F.I.R. Co-accused has been granted anticipatory bail. Investigation of the crime has been over. Charge sheet is filed. It is a dispute of civil nature. Provisions of the Act have been misused. She, therefore, urged for setting aside the impugned order and granting the appellant bail under Section 438 of the Criminal Procedure Code.

3. The learned A.P.P. and learned counsel Mr. Narwade for respondent No.2 took me through the F.I.R. and statements of the witnesses to ultimately submit that the offence punishable Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been made out. There is, therefore, bar of Section 18 of the Act to grant the relief.

4. The F.I.R. has been lodged by one Karunabai on 8/10/2017. She claims to have belonged to Scheduled Caste. It is her case that, the appellant and his two brothers have been in the business of manufacturing bricks. They run a

brick kiln. The family of the informant is comprised of her husband, three sons, a daughter and two daughters-in-law. In the year 2015, the informant and all her family members had been engaged for work on the brick kiln of the appellant. An agreement was executed between the appellant and the informant's husband. The informant and her family members were given Rs.20,000/- and 5000 bricks as advance towards consideration for working on the brick kiln for a specified period. It is further alleged that, neither the informant nor her family members were made aware of terms of the agreement. Their thumb impressions were obtained without making them aware of the contents of the agreement. Even a copy of the agreement was not given.

5. It is further alleged that, the informant and her family members worked on the brick kiln until Dassera festival of 2016. the appellant and his brothers would abuse the informant and her family members over their caste. They made them work over time and until late night. It was nothing short of a bonded labour. The appellant and his brothers would abuse and manhandle the informant and her family members. Having been fed with all the ill-treatment, the informant and her family members joined the job with Gangakhed Sugar Factory of one Gutte. They would work for

harvesting sugarcane. On one day, the appellant and his brother Satish came along with 10 – 12 unknown persons and forcibly took the informant and her family members in a tempo to their brick kiln. The appellant had said the informant that still Rs.20,000/- were outstanding with them. They will have to work on his brick kiln until the amount paid by them in advance is cleared. The informant and her family members had, therefore, to work on the brick kiln. It is further alleged that, on 31/12/2016, the appellant and his brother threw a party. They made the informant's son consume liquor and dance. Late in the night, appellant knocked on the door of the room wherein the informant's daughter-in-law was sleeping. She raised alarm. The appellant, therefore, fled. He had come to outrage her modesty.

6. It is further alleged that, for the Dassera festival of 2016, the informant returned to her home along with her family members. The appellant had, however, detained the informant's son Sunil and his wife at the brick kiln. He assaulted them. Sunil's wife was pregnant. The appellant was requested to allow her to leave for delivery. He, however, asked them to bring her mother-in-law to stay with her. As such, he did not allow the informant's daughter-in-law to take

a leave for delivery. Again they got executed a bond from the husband and sons of the informant. The grandmother of the informant's daughter-in-law had reported the matter at Nanalpeth Police Station. Police officials Gadekar and Gite had come. Only chapter case was filed against the appellant and his brother.

7. It is further alleged that, on 17/9/2017, it was Sunday. The appellant, his brother Dhanraj along with 10-12 unknown persons came in a Bolero jeep to the house of the informant at Shahu Nagar, Parbhani. They beat up the informant's son Anil. They abused the informant's daughter Akka. The appellant and his brother abused the informant and her family members over their caste. The appellant beat up the informant with fisticuffs. The informant, therefore, contacted the police officer Shisode on phone. The Police Constable Sarode along with other police staff came to the informant's house and took away the appellant and others. The police, however, let them go without making any enquiry. Only chapter case was filed before the Taluka Executive Magistrate. The informant, therefore, lodged the F.I.R. on 8/10/2017.

8. True, the allegations in the F.I.R. are serious. It is

a case of bonded labour. The appellant and his brother have allegedly abused and manhandled the informant and her family members. The alleged incidence took place during 2015 and 2016. Last such incident is said to have taken place on 17/9/2017. The F.I.R. has been lodged three weeks after the last incident. The delay in lodging the F.I.R. is said to have occasioned as the informant was not in mental frame and was frightened as well. On investigation of the crime, the charge sheet has been filed.

9. Although Section 18 of the Act excludes application of Section 438 of the Criminal Procedure Code in relation to any case involving arrest of any person on an accusation of having committed offence under the Act, the Court is not precluded from ascertaining as to whether really an offence under the Act is made out. If no prima facie case is made out, or when on judicial scrutiny the complaint is found to be prima facie malafide, there is absolutely no bar against grant of anticipatory bail in cases under the Atrocities Act. **(Pruthvi Raj Chauhan Vs. Union of India & ors. [(2020) 4 SCC 72]**.

10. It appears that, all was not well between the informant and her family members on one hand and the

appellant and his brothers on the other. The informant appears to have kept mum for little over one year. The informant and her family members might have suffered a lot at the hands of the appellant. There is, however, a gross delay in lodging of the F.I.R. True, there are statements of the witnesses. The witnesses belong to Scheduled Caste. In the incidence dated 17/9/2017, the appellant and his brother allegedly abused the informant and her family members uttering their caste. Since the relations between the parties have not been good and there being delay of three weeks in lodging of the F.I.R., possibility of giving a colourful/ exaggerated version of the alleged incident cannot be ruled out. I am, therefore, inclined to grant the relief.

11. In the result, the appeal succeeds. Hence the order :-

ORDER

(i) Criminal Appeal is allowed. The order dated 19/12/2019 passed by the Additional Sessions Judge-4, Parbhani, in Criminal M.A. No.73/2018 is set aside. In the event of arrest of the applicant in connection with Crime No.395/2017, registered at Nanalpeth Police Station, Taluka and District Parbhani for the offence punishable under

Sections 143, 147, 341, 342, 294, 452, 323, 504, 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant shall be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(ii) The appellant shall appear before the investigating officer as and when required and shall not tamper with the prosecution evidence.

**(R. G. AVACHAT)
JUDGE**

fmp/-