

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

Criminal Writ Petition No. 669 of 2020

(Kishor S/o Janardhan Bansod ..vs.. The State of Maharashtra through P.S. Jalalkheda,
Tah. Narkhed, Dist. Nagpur and anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. B. Moon, Advocate for the petitioner
Mr. N. R. Rode, APP for the State/respondent 1

CORAM : ROHIT B. DEO, J.

DATED : 29-01-2021

Heard.

2. The petitioner is the informant in Crime 187/2020 registered with Police Station, Jalalkheda, Tah. Narkhed, District Nagpur.

3. Crime is registered on the basis of report dated 29-5-2020.

4. The gist of the report is that the informant is residing at Pimpaldhara with his father and brothers. A reference is made in the report to an incident which allegedly occurred on 27-5-2020 between 12.30 to 1.00 p.m. On a trivial issue, the accused Mithilesh @ Mayur Umkar and his two friends assaulted Arvind Bansod and the informant, is the allegation. It is further alleged that the accused and his friends threatened Arvind. The next relevant allegation is that Arvind could not bear the humiliation and committed suicide by consuming pesticide.

5. On the basis of the said report in which the only allegation is that in view of the assault, Arvind felt humiliated and ended his life, offence punishable under Section 306 of the Indian Penal Code came to be registered.

6. The accused approached the learned Sessions Judge who granted pre-arrest protection vide order dated 2-6-2020.

7. It further appears that offences punishable under Section 3(1)(r)(s) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act were added on 8-6-2020.

8. The informant approached the learned Sessions Judge objecting to grant of pre-arrest protection on the assumption that the pre-arrest protection application is not finally decided. This objection is treated as an application seeking cancellation of pre-arrest protection.

9. The learned counsel Mr. Moon invites my attention to certain decisions of the Apex Court to substantiate the contention that if serious non-bailable and cognizable offence is added, subsequent to the pre-arrest protection, in exercise of power under Section 439(2), the pre-arrest protection can be cancelled. The submission, as a proposition of law, is unexceptionable. However, the crucial question is whether there is any justification for cancellation of pre-

arrest protection, and the answer must be an emphatic 'no'.

10. I have perused the material on record. In my considered view, *albeit* a *prima facie* view, invoking of the provisions of the Atrocities Act is with an intent of nullifying the order of pre-arrest protection.

11. Perusal of the report reveals that there is not even a single whisper that the accused or any other person abused deceased Arvind, or then, the informant and the only allegation is that Arvind and the informant were assaulted.

12. Mr. Moon would submit, that the report was not recorded as lodged. The submission is noted only as a courtesy to the learned counsel. An extremely serious allegation is made that the police officer who recorded the report acted dishonestly. That the allegation levelled against the police officer is baseless, is more than apparent from the fact that it was only on 10-6-2020 that it was suggested that the version of the informant was not recorded as per his say. The informant signed the report dated 29-5-2020. The statement of the informant was recorded under Section 161 of the Code of Criminal Procedure (Code) on 30-5-2020. Even in the 161 statement, there is not even a whisper that Arvind or the informant was abused in the name of the caste. Statements under Section 161 of the Code of the brother and father of the informant are recorded in close

proximity to the alleged incident and again there is not even a whisper as regards the commission of offence under the Atrocities Act. I have not come across any material which would suggest that the informant made any grievance with the superior police authority, much less a grievance in immediate proximity to the report, that the report is not recorded as per his say.

13. Considering the material on record, I am of the considered view that the learned Sessions Judge did not commit any error in declining to cancel the pre-arrest protection. It is more apparent that the addition of offence under the Atrocities Act was a strategic ploy.

14. The learned Sessions Judge further notes that the investigation is complete and the charge-sheet is filed and that the accused has no criminal antecedents.

15. The petition is dismissed.

JUDGE

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