

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CRIMINAL APPEAL NO.328 OF 2022

SARJERAO VISHWAMBHAR JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Salunke Sudarshan J.
APP for Respondent No.1-State : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Ms. Divya P. Khandelwal (Appointed)

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 24-06-2022

ORAL JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, the appeal is **admitted**.
3. By consent the appeal is taken up for final disposal.
4. Present appeal challenges the order passed in Criminal Misc. Application (Bail) No.92 of 2022 passed by Special Judge under the Atrocities Act (Additional Sessions Judge), Gangakhed, District Parbhani, dated 05-04-2022 rejecting the application under Section 438 of Cr.P.C. filed by the present appellant.
5. Heard learned Advocate Mr. S. J. Salunke for appellant, learned

APP Mr. S. P. Deshmukh for respondent No.1-State and learned Appointed Advocate Ms. Divya P. Khandelwal for respondent No.2.

6. It has been vehemently submitted on behalf of the appellant that the appellant is the whistle blower and he had taken objection with the Divisional Commissioner as well as the appropriate authorities regarding the misappropriation done by respondent No.2 who is the Sarpanch of village Dharasur, Taluka Gangakhed, District Parbhani. It is contended that huge amount was received by the Gampanchayat under the 14th Finance Commission for various projects. However, misappropriation has been committed by the Sarpanch and he has withdrawn lakh of rupees by showing some fake work. Even taking into consideration the actions taken by the appellant and others it was decided by the Divisional Commissioner to appoint an inquiry committee, however, for the purpose the petitioner as well as others were required to have hunger strike. They were apprehending that they would be falsely implicated under the offence of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. They had given an application to the District Superintendent of Police, Parbhani on 28-02-2022. The inquiry committee had paid visit to the village on 17-03-2022 and

according to respondent No.2, as per the FIR the incident had taken place on that day and it is alleged that the appellant had abused him in the name of caste. However, the FIR has been lodge belatedly on 21-03-2022 without giving any reason for the delay. Under such circumstances, there is room to believe that the story told in the FIR is concocted and false. The committee has submitted its report on 13-04-2022 supporting the allegations raised by the appellant and others regarding misappropriation. Definitely the FIR was prompted with malafides. All these aspects were not considered by the learned Special Judge and he has rejected the application mechanically. It deserves to be set aside and the appellant deserves to be released on bail.

7. Per contra, the learned APP for respondent No.1-State and learned Appointed Advocate to represent the cause of respondent No.2 strongly opposed the application. It has been submitted on behalf of the appellant that the police papers would show that abuses in the name of caste were given by the appellant to the informant. The incident had taken place at two places on 17-03-2022 and the witnesses who were present at either place have stated that the appellant had abused the informant in the name of

caste. It is not in dispute that the appellant does not know the caste of the informant. It was fairly submitted by the learned APP that the statements of the members of the inquiry committee have only accepted that there was some dispute going on between respondent No.2 and appellant. Learned APP as well as learned Advocate for respondent No.2 both have stated that since specific role has been attributed to the appellant and he has uttered those abuses which were malice the informant on the point of his caste, the bail application before the Special Judge was not maintainable in view of bar under Section 18 of the Atrocities Act.

8. Perusal of the FIR lodged by respondent No.2 shows that he had given his caste while lodging the report. He say that since February 2021 he is the Sarpanch of village Dharasur. He has stated that on 17-03-2022 the inquiry committee had come to the Dharasur to make inquiry in respect of the works done under the 14th Finance Commission by the Grampanchayat. He has given the names of the committee members and it is to be noted from the documents which have been produced by the appellant on record that those committee members have been appointed to make inquiry in respect of allegations of misappropriation against the

informant. The informant in his FIR has conveniently not disclosed as to why the inquiry was ordered. He states that the first incident took place when he was coming towards Grampanchayat around 02.15 to 03.00 p.m. He met the appellant and at that time the appellant started abusing in the name of caste to the informant. He says that two witnesses by name Laxman Limbaji Kadam and Prakash Digamber Kadam had witnessed the incident. It is to be noted that there are no allegations about previous enmity in the FIR nor there is reason as to why the appellant would have abused or started abusing the informant. If we consider the omissions in respect of the reason while the inquiry committee was appointed and the connection of that committee with the complaint applications made by the appellant, then we could gather and prima facie consider the substance in the say of the appellant that the FIR is motivated for some reason.

9. According to the informant the second incident had taken place at about 03.30 to 04.00 p.m when the inquiry committee had gone near the Anganwadi which is near Bus Stand. He states that the appellant told the committee that it is not Anganwadi and the informant then called one Pratap Kadam who was the then Sarpanch

in whose tenure the construction of Anganwadi had taken place. He then says that after the phone call Pratap Kadam arrived and told the committee that Anganwadi work has been done in his period. Then appellant abused the informant in the name of caste. The informant then says that the second incident is witnessed by the Pratap Kadam, Bhagwat Kadam, Anant Kadam, Pratik Kadam and the officers in the inquiry committee. If we consider the statement of Pratap Kadam it can be seen that no doubt he was earlier appears to be the Sarpanch in view of the contents of the FIR itself and also the fact that his wife is now Up-Sarpanch of village Dharasur. He speaks about the second incident. Same is the case with witness Bhagwat Kadam, Pratap Kadam. But at the same time we also require to consider the statements of the members of the inquiry committee and all of them have stated that there was some heat altercation between the appellant and the informant. They are totally silent on the point that abuses in the name of accused were given by the appellant to the informant. Therefore, there appears to be words against words in the statements of the witnesses recorded under Section 161 of Cr.P.C.

10. As regards the first incident is concerned, it is stated to have

been witnessed by Laxman Kadam. Both have stated that when informant was proceeding towards school, the appellant came and asked by abusing the informant in the name of caste as to what work he has at that place and he should not be seen in the village from tomorrow, otherwise he would be killed. The appellant was knowing that the informant was the Sarpanch of the village and the Sarpanch can go anywhere in the village. Why the appellant will have any objection of Sarpanch being seen at a place in the village, is not understandable. So also the part of the statement that, "तू इकडे कशाला आलास. उद्यापासून गावात दिसलास तर तुला खल्लास करुन टाकतो. तुझे घर मी गावात राहू देणार नाही. तुझे घर मी गावाचे बाहेर हाकलून लावणार आहे." This fact is not even told by the informant. Statements of informant, Pratap Kadam, Pratik Kadam, Bhagwat Kadam, Laxman Kadam, Prakash Kadam, Anant Kadam have been recorded under Section 164 of Cr.P.C. also. No doubt these persons except Anant Kadam have reiterated their earlier statement, but as aforesaid it does not match with the statements under Section 161 of Cr.P.C. of the committee members. Even in statement of Anant Kadam under Section 164 of Cr.P.C. he states that one person told to another person that he has not constructed Anganwadi and it has been constructed in the period

of earlier Sarpanch. He says that thereafter dispute took place. He does not say anything more than that. Nothing about abuse in the name of caste.

11. At this stage the statement of the committee members has not been recorded under Section 164 of Cr.P.C. for which there is no explanation from the Investigating Officer.

12. We cannot afford to not to take into account the documents produced by the appellant from the point of view, at the cost of repetition that it was the appellant and others who had insisted for inquiry committee and making inquiry in respect of the alleged misappropriation, the committee has given its report and held respondent No.2 responsible for the same along with the Block Development Officer. The angle of registration of the FIR with malafide intention raised by the appellants, cannot be ruled out.

13. Perusal of the impugned order would show that only in paragraph No.7 the learned Special Judge has said something as to why he is of the opinion that bail should not be granted. Said paragraph No.7 consist of 11 lines. Those statements which have been tried to be projected as reasons to reject the application, are

too general in nature and that too without any base. When the learned Special Judge says that possibility of tampering evidence and pressurizing witnesses, creating hurdle during investigation cannot be ruled out, then there should be material before the concerned Court. Without any base only on the basis of such general statements, bail application cannot be rejected. Another fact to be noted is that in paragraph No.3 which is referring to the submissions on behalf of the appellant about four decisions of this Court were cited before the learned Special Judge. However, while giving reasons, the learned Special Judge has not even referred to them and has not stated as to how those authorities are not applicable or why he does not want to use the ratio laid down in those authorities. The learned Special Judge has not even considered the ratio laid down by the Hon'ble Apex Court in *Prithviraj Chavan v. Union of India, Writ Petition No.1015 of 2018, decided on 10-02-2020*, wherein it has been held that :-

"10. Concerning the applicability of provisions of Section 438 Cr.P.C., it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and

18A(i) shall not apply. We have clarified this aspect while deciding the review petitions.”

Therefore, definitely the impugned order is passed by the learned Special Judge absolutely without application of mind. In fact, reason is the backbone of any order or Judgment to be based by Courts of Law. When such cryptic orders are passed just to reject the bail applications, it gives an impression that such orders are passed with some fear in mind. A judicial order cannot be the outcome of fear. There has to be good reasons either for allowing an application or rejecting an application. If the learned Special Judge would have considered the ratio laid down in those decisions which were relied or/and other decisions by this Court, he could have come to know that in fact he was supposed to go in to the facts of the case, come to a conclusion as to whether prima facie evidence is there which can attract the offence under the Atrocities Act in order to create the bar under Section 18 of the said Act for an application under Section 438 of Cr.P.C., that is, what is the ratio laid down in *Pruthviraj Chavan (Supra)*. When the impugned order is passed without application of mind, it cannot be allowed to sustain even for a minute, it deserves to be set aside.

14. Taking into consideration the aforesaid material, it can be said that no prima facie case has been made out for attracting the offence under the Atrocities Act, and therefore, there was no bar for entertaining the application under Section 438 of Cr.P.C.. The said application deserves to be allowed as it appears that the FIR is tainted with malafide. For the aforesaid reasons, following order is passed.

ORDER

- 1) Appeal stands allowed.
- 2) Order dated 05-04-2022, passed by learned Additional Sessions Judge, Gangakhed, District Parbhani, in Criminal Misc. Application (Bail) No.92 of 2022, is hereby set aside.
- 3) The interim order passed by this Court on 22-04-2022, is hereby confirmed.
- 4) In other words, in the alternative if the appellant is not formally arrested, in the event of arrest of appellant Sarjerao Vishwambhar Jadhav, in connection with Crime No.61 of 2022, registered with Sonpeth Police Station,

District Parbhani, for the offence punishable under Section 3 (1) (r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Section 504, 506 of India Penal Code, the appellant be released on PR and SB of Rs.15000/- (fifteen thousand).

5) The appellant shall not indulge in any criminal activity and he shall not tamper with the evidence of prosecution in any manner.

6) Fees of the appointed Advocate is quantified @ of Rs.5000/- (five thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.