

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.826 OF 2022

NAMDEV SHRIRAM SARWADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Pramod N. Muley
APP for Respondent No.1/State : Ms. V. S. Choudhari
Advocate for Respondent No.2 : Mr. Nikhil D. Jaiswal
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CORAM : S. G. MEHARE, J.

DATE : 01-08-2022

Order :-

1. Heard the learned counsel for the applicant, the learned APP for the State, and the learned counsel for respondent No.2/victim.
2. The applicant has a case that there were boundary disputes in his family and the family of the victim. Therefore, false allegations have been levelled against the applicant that he has intentionally insulted the victim to humiliate her being a Scheduled Caste member.
3. The learned counsel for the applicant has argued that considering the place of the incident as alleged, it cannot be said that it is a place in public view. The prosecution has no case that any person had witnessed the incident; therefore, prima facie material does not warrant his arrest. Therefore, though there is a

bar under Section 18A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) *Act*, 1989 [in short, “the Act”], this Court may exercise discretion granting anticipatory bail. He relied on the decision of this Court, dated 25.09.2019, delivered in the case of ***Salim Abdul Shaikh vs The State Of Maharashtra [Criminal Appeal No. 1030 of 2018]***.

4. The learned APP and the learned counsel for the victim have vehemently argued that the victim was 13 years old. She was not concerned with any family dispute, but the applicant uttered words about her caste. The incident happened in a place within public view. The victim is a minor, and she can not be disbelieved. Therefore, the application cannot be considered as there is a bar under Section 18A of the Act. Besides the above, the offence is serious; therefore, the applicant has no case for anticipatory bail.

5. In view of the allegations levelled against the applicant in the FIR, the police has registered the FIR for the offence punishable under Sections 354, 504 and 506 of the Indian Penal Code with Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r) and 3(2)(va) of the Act and Section 12 of the Protection of Children from Sexual Offences Act, 2012. It has been alleged against the accused that on the day of the incident, the victim was on the turn of the village road. The accused went close and said he wanted to talk to her, and she allowed him to talk. He said that he liked her. Then the victim

replied that he should think before speaking to a girl who belongs to SC/ST, and thereafter, he uttered the words about her caste.

6. This Court, in the case of **Balu s/o. Bajirao Galande vs. State of Maharashtra and another, 2006 (6) AIR (Bom) 251**, has observed in paragraph No. 19, as under -

“19. Considering the judicial pronouncements on the subject, the expression within public view must be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of at least one independent person. The test of audibility and visibility can be taken to have been satisfied if an independent person is actually present or is at a place where the utterances are clearly audible and reaches the scene of occurrence while the incidence is still in progress.”

7. The Honourable Apex Court in the case of **Prathvi Raj Chauhan vs Union of India, [WRIT PETITION [C] NO. 1015 OF 2018]** decided on 10.02.2020, (paragraph 19) has laid down the law that “as far as the provision of Section 18A and application for anticipatory bail is concerned, the judgment of Mishra J. where no prima facie has stated that where no material exists warranting the arrest in complaint, the Court has inherent power to direct the pre-arrest bail”. The power Section 438 of the Code of Criminal Procedure is to be used sparingly, and such orders are made in exceptional cases where no *prima facie* case is made out as shown in the FIR. That the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very

exceptional cases where no prima facie offence is made out as shown in the FIR.

8. The learned Apex Court, in the case of ***Hitesh Verma Versus State of Uttarakhand and another, (2020) 10 SCC 710*** has observed in paragraph no. 18 that the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a scheduled caste, the offence under Section 3(1)(r) of the Act is not made out.

9. In the present case, the specific words have been allegedly uttered against the victim on her caste at the turn of the village road. However, the prosecution has no case that the said incident took place in the presence of or in the proximity of at least one independent witness. The applicant has a case where there was a family and boundary dispute. The offence does not appear to be established merely because the informant is a member of Scheduled Caste since the families have boundary disputes. The intention to humiliate the victim being a member of a Scheduled caste cannot be believed at this juncture.

10. Considering the law laid down by the Honourable Apex Court and this Court in the cases cited supra. In the absence of the presence of or in the proximity of at least one independent witness, this Court is of the view that the applicant is entitled to be

protected. Hence, the following order -

- i) The application is allowed.
- ii) In the event of arrest, applicant Namdev Shriram Sarwade be released on bail, on furnishing P.B. and S.B. of Rs.15,000/- with one solvent surety of the like amount, in connection with C.R.No. 122 of 2022 registered with Police Station Majalgaon Rural, District Beed, for the offence punishable under Sections 354, 504 and 506 of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 12 of the Protection of Children from Sexual Offences Act, 2012.

(S. G. MEHARE)
JUDGE

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