

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CRIMINAL APPEAL NO.573 OF 2022

GAJANAN SUBHASHRAO KALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
...

Advocate for Appellant : Ms Pratibha Jagdish Bharad
APP for Respondent No.1 and 2/State: Mr P.G. Borade
Advocate for Respondent No.3 : Ms Sarita Gaikwad

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 23rd SEPTEMBER, 2022

PER COURT :

1. This appeal is directed against the impugned order of rejection of anticipatory bail passed by the learned Additional Sessions Judge-3, Hingoli in Criminal Bail Application No. 208/2022 by taking aid of section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for the sake of convenience).

2. Heard Ms Pratibha Bharad, learned counsel for the appellant, Mr P.G. Borade, learned APP for respondent Nos.1 and 2/State and Ms Sarita Gaikwad, learned counsel appointed for respondent No.3/first informant.

3. Ms Bharad, learned counsel for the appellant invited my attention to the copy of FIR. She submitted that the alleged incident had taken place on 20th January, 2021 at about 6.00 p.m. to 11.00 p.m. at village Mhaisgavan under the jurisdiction of Police Station Akhada

Balapur, Tq. Kalamnuri, Dist. Hingoli. She submitted that there was no prompt FIR about the alleged incident. The first informant lodged private complaint on 06.04.2022 after delay of more than one year and thereafter, FIR came to be registered on 03.06.2022. She submitted that the caste of the first informant is nowhere stated in the FIR. She further pointed out that the allegations levelled against the present appellant are of vague nature and absurd. No specific role is attributed against the appellant in order to attract provisions of the Atrocities Act. She submitted that the present appellant is suffering from paralysis and restricted to bed. She submitted that section 4 of the Atrocities Act do not attract against the appellant since he is not a public servant. Section 3 applied is also not clear under which sub section 3 mentioned in the FIR. She therefore submitted that in view of vague nature of allegations and in absence of caste of the first informant mentioned in the FIR, the appellant is entitled to get anticipatory bail. The appellant is also liable to be enlarged on bail by looking towards his bed ridden condition on account of paralysis. She therefore urged to confirm the interim protection granted by this Court vide order dated 5th August, 2022.

4. Mr P.G. Borade, learned APP for the State opposed to grant anticipatory bail to the appellant. He invited my attention to the statements of the witnesses. He submitted that there are statements of the witnesses on record which support to the prosecution case. The role allegedly played by the appellant is revealed during the course of investigation and while recording the statements of three witnesses. He, therefore submitted that the bar under section 18 of the Atrocities Act comes into picture and

therefore, appellant is not entitled to get anticipatory bail.

5. Ms Sarita Gaikwad, learned counsel appointed for respondent No.3 also argued on the same lines. She invited my attention to the copy of bail order passed by the learned Additional Sessions Judge-3, Hingoli, more particularly, observations regarding delay in FIR. She submitted that the delay has been satisfactorily explained and that has been considered by the learned Additional Sessions Judge. She submitted that prima facie section 3 of the Atrocities Act attracts in view of allegations levelled against the appellant. As such, the appellant is not entitled to get anticipatory bail. She, therefore, urged to dismiss the appeal.

6. Having regard to the submissions of learned counsel for both the sides and the learned APP for the State, I have gone through the copy of FIR, copy of impugned order passed by the learned Additional Sessions Judge-3, Hingoli, copy of discharge card issued by Dr Ruturaj Jadhav and other papers. Perused the report submitted by the S.D.P.O. Vasmat and the statements of witnesses recorded by the Investigating Officer.

7. At the outset, let me place on record that this Court was pleased to grant interim protection to the appellant vide order dated 5th August, 2022 by recording in-detail reasons in para No.6 of the order dated 5th August, 2022. This Court has made following observations.

6. Having considered the submissions of Ms Bharad, learned counsel for the appellant and looking to the fact that there was an inordinate delay in putting the criminal law in motion, the very genesis of the prosecution is

seriously under the clouds. *Prima facie*, the application of Sections 3 and 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the appellant do not attract. Section 4 of the Act provides for punishment in respect of neglect of duties being a public servant, but not being a member of a Scheduled caste or Scheduled Tribe, willfully neglects his duties required to be performed by him under this Act and the rules made thereunder. The appellant is not a public servant in order to attract Section 4 of the Act. So far as Section 3 of the said Act applied against the appellant is concerned, no details like which particular provision attracts. Be that as it may, as pointed out earlier the very genesis of the prosecution is seriously under cloud in putting the criminal law in motion.

8. On going through the report submitted by the S.D.P.O. Vasmat, it nowhere reveals that the appellant is not co-operating with the investigation. It is not the case of the S.D.P.O. that appellant is putting hurdles in the investigation. As such, it can be presumed that appellant is extending co-operation in the investigation as per the conditions imposed by this Court while granting interim protection vide order dated 5th August, 2022.

9. It is to be seen whether the interim protection granted by this Court needs to be confirmed or liable to be vacated.

10. On careful examination of the copy of FIR, it would reveal that Crime No.0223/2022 came to be registered at Akhada Balapur Police Station against the appellant and others under sections 323, 324, 325, 441, 442, 504 and 506 read with 34 of IPC and under section 3 and 4 of

the Atrocities Act. On microscopic examination of the FIR, it would find that the allegations levelled against the appellant are of vague nature along with other co-accused. No specific role is attributed to the present appellant for giving abuses with reference to the caste of the first informant. It is also rightly pointed out that the caste of the first informant is not mentioned in the FIR. Another important aspect is about inordinate delay in lodging of FIR, which has been considered by this Court while granting interim protection, though there are certain observations made by the learned Additional Sessions Judge-3, Hingoli while rejecting the anticipatory bail application. When the genesis of the prosecution is highly suspicious, why a person should be deprived from getting benefit of anticipatory bail particularly, when the provisions of the Atrocities Act do not prima facie attract. As pointed out earlier section 4 relates to the offences against the public servant under the Atrocities Act which do not attract in respect of this appellant. The FIR itself indicates which sub section of section 3 attracts against the appellant. As such, the prosecution itself is not sure which particular section is applicable in view of the absurd nature of allegations. The allegations are made against the appellant and others in a wholesale manner which is very much difficult to attract prima facie provisions of the Atrocities Act.

11. Having regard to the above reasons and discussion, the interim protection granted by this Court to the appellant needs to be confirmed, however, with the same conditions, which may take care of remaining part of investigation.

ORDER

- (I) The Criminal Appeal stands allowed.
- (II) The impugned order of rejection of anticipatory bail passed by the learned Additional Sessions Judge-3, Hingoli in Criminal Bail Application No. 208/2022 is hereby quashed and set aside.
- (III) The interim anticipatory bail granted by this Court vide order dated 5th August, 2022 is hereby confirmed with same conditions.
- (IV) Inform to the concerned Court and Police Station accordingly.
- (V) Ms Sarita Gaikwad is appointed by this Court from Legal Aid Panel to espouse the cause for respondent No.3/first informant. Her professional fees is quantified at Rs.5,000/- (Rupees Five Thousand Only). The Secretary, High Court Legal Services Sub-Committee, Aurangabad is requested to make payment of professional fees as quantified to Ms Sarita Gaikwad, learned counsel appointed for Respondent No.3/first informant.
- (VI) The Criminal Appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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