

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

CRIMINAL APPEAL NO. 761 OF 2022

Dadasaheb Khushaba Pawar

..APPELLANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Ms. Pradnya Talekar, Advocate h/f Talekar and Associates for appellant

Mr. D.R. Kale, Public Prosecutor for respondent no.1 - State

Mr. S.S. Thombre, Advocate for respondent no.2

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**CORAM : R.G. AVACHAT,
R.M. JOSHI, JJ.**

DATE : 20th OCTOBER, 2022

PER COURT :

1. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act of 1989'). The challenge in this appeal is to an order dated 01st October, 2022 in Criminal Bail Application No. 341 of 2022 passed by the learned Additional Sessions Judge, Kopargaon refusing to grant the appellant anticipatory bail in connection with Crime No. 429 of 2022 registered with Loni Police Station, Dist. Ahmednagar for the offences punishable under Sections 307, 323, 324, 327, 341 and 504 of the Indian Penal Code ('I.P.C.') and under Sections 4, 3(1)(r), 3(1)(s) and 4(1) of the Act of 1989.

2. Heard. Perused the First Information Report ('F.I.R.') and related papers.

3. The F.I.R. has been lodged by one Kiran Brahmne on 15th September, 2022 at about 11:08 p.m. It is his case that his friend – Junaid Inamdar, he himself and six others have taken a sand spot in an auction. As such, they have been in sand mining business. It is further his case that they have been doing the said business observing all terms and conditions of the auction. The appellant, for one or other reason has been making false complaints to the revenue authorities. He also threatening the informant that if he was not paid a sum of Rs.10 lakhs, he would ensure to compel them to close down their sand mining business. According to the informant, the appellant desires to extort a sum of Rs.10 lakhs from him and his friends.

4. It has further been averred in the F.I.R. that on 15th September, 2022 by 11:55 a.m., the informant alongwith his friend Junaid Inamdar was proceeding on his motorbike from Songaon to Sangamner via Loni. While they were passing by Hotel Palak at Loni, the appellant came on a motorbike. He was a pillion rider. There were other two persons riding on another motorbike. The appellant blocked the informant's way. The appellant abused the informant and his friend in filthy language and even on appellant's caste as well. It is also alleged that the appellant fished out a cutter and attempted to assault on his neck with it. The informant swerve a bit to avoid the assault

on his neck. The blow fell on his arm. The appellant gave the informant two more blows with the cutter. The other three persons assaulted Junaid with fist and kick blows. It is also alleged that the appellant robbed Junaid of his 20 gms. gold chain and relieved the informant of a sum of Rs.7,500/-. When Pradeep Gaikwad and Suhas Brahmne arrived there, the appellant and his associates fled towards Sangamner. The informant first went to the hospital. He took treatment and then came to the police station to lodge the F.I.R.

5. Learned counsel for the appellant would submit that the informant cried wolf. It was in fact the appellant, who had been assaulted at 11:15 p.m. on the given day. It was a bid on his life. He immediately rushed to Primary Health Center, Nimgaon Jali. His efforts to lodge the F.I.R. had not been paid heed to by the concerned police authorities. The appellant had, therefore, to approach the Superintendent of Police and other higher ups as well. It is only thereafter the F.I.R. lodged by him came to be registered. The informant and his associates have a patronage of political bigwig. Neither the informant has even been arrested in connection with the crime registered at the instance of the appellant, nor the informant has filed application for anticipatory bail. Some photographs have been placed on record to indicate the appellant and his associates to have been in the company of a cabinet minister. It is the case of appellant that the informant and his associates have political patronage. The appellant is an anti-corruption crusader. He is social

worker as well. The appellant has filed not less than ten public interest litigations in relation to variety of social subjects. Since the appellant was after corrupt officials and politicians, he had threat perception. He, therefore, applied for police protection. He had also filed a writ petition to secure police protection. All the contentions made by learned counsel for the appellant are sought to be reinforced by relying on documentary material. According to learned counsel for the appellant, the F.I.R. contains a false and concocted version. So called injuries suffered by the informant might have been self inflicted. Nature thereof is simple. When the alleged incident took place in the morning, the F.I.R. has been lodged by little past 11:00 p.m. The same suggests that the same has been lodged only with a view to see the appellant is taught a lesson by keeping him behind the bars. According to learned counsel, Section 18 of the Act of 1989, in the facts and circumstances of the case, would not come in the way for granting relief to the appellant herein.

6. Learned Public Prosecutor and learned counsel representing the informant would, on the other hand, submit that the appellant admits the incident. Both of them took us through the allegations in the F.I.R. They relied on the judgments of Apex Court in cases of ***Vilas Pandurang Pawar and Ors. Vs. State of Maharashtra and Ors., AIR 2012 SC 3316*** and ***Hariram Bhambhi Vs. Satyanarayan and Ors., AIR 2021 SC 5610***. Both learned

counsel would submit that allegations in the F.I.R. undoubtedly make out a prima facie case of commission of offence punishable under provisions of the Act of 1989. There would, therefore, be a bar of Section 18 of the Act of 1989 to grant pre-arrest bail. Some averments in the appeal memo and in the F.I.R. lodged by the appellant were brought to the notice to indicate that the appellant has made a false statement that he did not know the informant. It was also submitted by learned Public Prosecutor that the appellant fled from the hospital even without paying the hospital bill. According to him, custodial interrogation of the appellant is required. The weapon used in the commission of offence is yet to be recovered. Moreover, in view of bar under Section 18 of the Act of 1989, the appeal is liable to be dismissed.

7. Considered the submissions advanced. It is true that Section 18 of the Act of 1989 rules out application of Section 438 of Code of Criminal Procedure in case of involving arrest of any person on an accusation of having committed an offence under the Act of 1989. Learned counsel for the informant was, therefore, justified in placing reliance on the authorities referred to hereinabove.

8. It however, needs no mention that each case has to be decided on the facts and circumstances therein. From the documents placed on record, we are prima facie satisfied that the appellant herein is a social worker. He is an anti-corruption crusader as well. He has filed not less than

ten public interest litigations to espouse various social causes. In one of the public interest litigations filed by him, the concerned respondents therein have been directed penalty of Rs.1,74,00,000/-. Learned counsel for the appellant was justified in submitting that had the appellant been extorting sand miners by one or other way, he would have withdrawn the public interest litigations. There is also material on record to indicate the appellant to have preferred a writ petition to secure police protection when his prayer was turned down by the concerned police officials. The same indicates the appellant to have had a threat perception. From the material on record, we have reason to prima facie observe the informant and his associates are associated with high ranking cabinet minister of State of Maharashtra.

9. Now coming to the incident in question, it is to be stated that the informant claimed to have been assaulted by the appellant with a cutter. It was stated to be a bid on his life. The alleged incident took place by 11:00 in the morning. The injuries suffered by the informant are simple in nature. When the informant claims it to be a bid on his life, we fail to understand as to why he lodged the F.I.R. twelve hours after the alleged incident. The allegations in F.I.R. that the appellant abused the informant over his caste and robbed him and his associate are very easy to make. For lifting the bar under Section 18 of the Act of 1989, the Court is expected to verify veracity of the allegations in the F.I.R., at least prima facie. The record would indicate the

appellant herein was assaulted at 11:15 a.m. on 15th September, 2022. He rushed to the Primary Health Center, Nimgaon Jali. His medical papers issued by the concerned medical officer have been placed on record to indicate him to have suffered about eight injuries. There is also record to indicate the medical officer to have made it a medico-legal case and memo thereof was forwarded to the Police Inspectors of Police Stations at Ashwi and Loni. It appears that the officials of the concerned police stations have not paid any heed thereto. The appellant had to approach the Superintendent of Police and even higher ups to ensure that the F.I.R. gets registered in relation to the assault on him. It has further been submitted by learned counsel for the appellant that accused named in the F.I.R. lodged by the appellant herein have even not been summoned to enquire with. The facts and circumstances of the case lead us to observe that the F.I.R. in question is a product of imagination and concoction as well. There would, therefore, be no bar of Section 18 of the Act of 1989 to grant the appellant relief. These are the observations for the purpose of deciding this appeal.

10. For all the aforesaid reasons, we are inclined to allow the appeal. Hence the following order :-

ORDER

- (i) Criminal appeal is allowed.
- (ii) In the event of arrest of the appellant in connection with Crime No. 429/2022 registered with Loni Police Station, Tq.

Rahata, Dist. Ahmednagar, for the offences punishable under Sections 307, 323, 324, 327, 341 and 504 of the Indian Penal Code and under Sections 4, 3(1)(r), 3(1) (s) and 4(1) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, he be released on executing P.R. Bond in the sum of Rs. 15,000/- only (Rs. Fifteen Thousand) with one surety in the like amount.

(iii) The appellant shall not tamper with the prosecution evidence.

(iv) The appellant shall appear before the investigating officer as and when required.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

SSD