

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.346 OF 2021

Prashant Vanjare, Age 60 years,
R/o.A-1501, Ivy Tower, Vasant Valley,
Off General A.K.Vaidya Marg,
Malad (East), Mumbai-400 097.

Appellant

versus

1. The State of Maharashtra.
2. Jayantibhai Ambalal Parmar,
Age 50 years, R/o.Rohidas Nagar,
Sukurwadi Road No.9, Room No.7,
M.G.Road, Borivali (E), Mumbai.

Respondents

Mr.Niranjan Mundargi i/by Mr.Prasanna A. Bhangale, Advocate for appellant.

Ms.Supriya C. Jaware, Advocate for respondent no.2.
ASI S.S.Khamkar, Vanarai Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 15th July 2022

PC :

1. This an appeal u/s.14A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Appellant is apprehending arrest in C.R No.14 of 2021 registered with Vanrai Police Station, Goregaon for offences under Sections 3(1)(r)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (`the Act' for short).

2. The first informant is carrying out sweeping work at Satguru Nanik Industrial Premises Co-op. Society Limited, Goregaon (East), Mumbai (`the society') since last 20 years. The complainant had

obtained contract of sweeping at Satguru Nanik Industrial Premises Co-op. Society Ltd, Goreagaon (East), Mumbai. Along with first informant, his wife Champa, Arun Kasbe, Sarswati Kadam are also doing sweeping work at the said place. The accused is the Chairman of the Industry. The first informant and others were getting salary for sweeping work from Satguru Nanik Society. Salary was due. Payment for cleaning chambers was pending. On 7th October 2020 the first informant approached the accused for demanding salary of March, April and May-2020. The complainant was abused on caste by accused by saying that people from Bhangi community would not improve referring to complainant. The incident had occurred near lane between Gala no.48 and 49 in the presence of Gangadhar Sukhthankar and others. The complainant approached the police and FIR was registered on 12th February 2021.

3. The appellant preferred application for anticipatory bail before Sessions Court at Dindoshi. The said application was rejected vide order dated 31st March 2021

4. Learned advocate for appellant submitted that FIR has been registered to falsely implicate the appellant. The FIR suffers from mala fides. The first informant was given contract for sweeping. As per terms, contract can be terminated if found that work is not satisfactory. The meeting of Managing Committee of said Society was held on 5th September 2020. It was resolved that first informant contract's will stand terminated from 1st November 2020 since first informant was not doing the cleaning work properly in spite of reminders sent to him his services were terminated. The first informant was informed about the same on 5th October 2020. The

complaint was lodged on 7th October 2020 alleging non payment of dues and abuses on caste. Even before he was intimated termination, in the letter it was stated that appellant was threatening the first informant that his contract will be terminated. In the letter his grievance was about non payment of his dues. In the complaint dated 7th October 2020 there is no reference of alleged incident which took place near Gala nos.48 and 49. The reference of Gangadhar Sukhthankar was added subsequently as services were terminated on 12th November 2020. Mr.Sukhthankar was also aggrieved by his termination and payment of dues. Hence first informant and Mr.Sukhthankar aligned their grievances against appellant and first informant improved his complaint by referring presence of Mr.Sukhthankar for the first time on 12th February 2020. Vide letter dated 9th October 2020 appellant had informed first informant that it is held in the meeting held on 5th October 2020 that cleaning contract of first informant has been terminated. The cheques for Rs.39,600/- towards payment of services rendered by first informant were kept available. The first informant started demanding more money Bonus cheque of Rs.25,000’/- was made available. The first informant did not come to collect cheque as he was demanding more money. On 19th November 2020 the first informant addressed a letter to the Chairman of the Society about non payment of dues. There is no reference to the presence of Mr.Sukhthankar at the time of alleged incident. On 18th December 2020 the Secretary addressed letter to Mr.Sukhthankar seeking explanation about entry of cash withdrawal. Mr.Sukhthankar was aggrieved about it and made false allegations against appellant. Vide letter dated 21st December 2020 Mr.Sukhthankar was informed that FIR will be filed against him as he was not returning the amount due

to the society. The first informant and Mr.Sukhthankar joined hands as both were like minded individuals and had same grievances on termination of their services. The ingredients to constitute the offence under the Act are lacking. There is no legal impediment in granting anticipatory bail to the appellant. The version of complainant is not supported by any independent witnesses.

5. Learned counsel for appellant had relied upon following decisions :-

- (a) Dr.Subhash Kashinath Mahajan Vs State of Maharashtra and another (AIR-2018-SC (Criminal)-498);
- (b) Union of India Vs. State of Maharashtra and others (AIR-2019-SC-4917);
- (c) Kailas Shankarlal Soni Vs. The State of Maharashtra and another – (2022-ALL MR (Cri.)-526);
- (d) Prathvi Raj Chauhan Vs. Union of India and others (AIR-2020-SC-1036);

6. Learned advocate for respondent no.2 submitted that abuses were hurled at the complainant within public view. The offences under the Act are clearly made out. Appellant is not entitled for anticipatory bail in view of bar u/s.18 of the Act.

7. Learned APP submitted that FIR makes out the offence against appellant. Application for anticipatory bail is not maintainable in view of bar u/s.18 of the Act. The appellant had abused the victim on his caste. Witness Gangadhar Sukhthankar has also lodged the N.C on 31st March 2022 against appellant. Mr.Sukhthankar and others were present at the time of incident. Appellant had abused

the complainant on his caste in full public view. Investigation is in progress. Appeal may be dismissed.

8. From the documents on record it appears that first informant was holding a sweeping contract. Appellant who was the Chairman of the society had grievance about the work carried out by complainant. In the meeting held by employers, services of complainant were terminated. The complainant had lodged written complaint dated 7th October 2020. In the said complaint there is no reference to date of incident. It is alleged that whenever the complainant approaches the accused to demand his dues, he is abused on caste. In the said complaint dated 7th October 2020 given to Vanrai Police Station on 12th October 2020, there is no reference to any incident of abuses on caste at lane between Gala 48 and 49. There is no reference to presence of Mr.Gangadhar Sukhthankar or any person. The FIR is improved version of complainant. The decision about termination of service was communicated to the first informant. The circumstances spelt out from the record would indicate that FIR was lodged on account mala fides. Apparently services of Mr.Sukhthankar were also terminated. Thus, first informant and witness Mr.Sukhthankar had animosity against appellant. The FIR was lodged out of vendetta. Although in the affidavit in reply it is stated that statements of witnesses are recorded, it is not spelt out whether statements of independent witnesses in whose presence the complainant was abused on caste.

9. Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads as follows :

“18. Section 438 of the Code not to apply to persons committing an offence under the Act. - Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

10. In the case of Vilas Pandurang Pawar V/s State of Maharashtra and Others (Supra) it was observed that Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast upon the Court to verify the averments in the complaint and to find out whether an offence under Section 3(i) of the SC/ST Act has been *prima facie* made out. In the case of Sumitha Pradeep V/s Arun Kumar C.K. and Another (Supra) the Apex Court was dealing with cancellation of anticipatory bail granted by High Court in a case involving offence under POCSO Act. The Apex Court had observed that in many anticipatory bail matters, it is noticed that one common argument being canvassed that, no custodial interrogation is required and therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that, if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered alongwith other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that, the *prima facie* case against the accused should be ignored or over looked and he should be granted anticipatory bail. In the case of Dr. Subhash Kashinath Mahajan V/s State of Maharashtra and Another (2018) 6 SCC 454 the Hon'ble Supreme Court had considered the question whether there is an absolute bar to the grant of anticipatory bail under SC/ST Act. The Court referred

to several decisions including the decisions in the case of Vilas Pandurang Pawar (Supra) and Shakuntala Devi V/s Baljinder Singh (2014) 15 SCC 521. In Paragraph 56 of the decision it was observed that, there can be no dispute with the proposition that mere unilateral allegation by any individual belonging to any caste, when such allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny. Thus exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. If this interpretation is not taken, it may be difficult for public servants to discharge their bona fide functions and in given cases, they can be blackmailed with the threat of a false case being registered under Atrocities Act, without any protection of law. Even a non public servant can be blackmailed to surrender his civil rights. This is not the intention of law. Such law cannot stand judicial scrutiny. It will fall foul of guaranteed fundamental rights of fair and reasonable procedure being followed if a person is deprived of life and liberty. In paragraphs 57 it was observed that exclusion of 438 Cr.P.C. applies when a *prima facie* case of commission of offence under the Atrocities Act is made out. On the other hand, if it can be shown that, the allegations are *prima facie* motivated and false, such exclusion will not apply. The decision of Gujarat High Court in Pankaj D. Suthar V/s State of Gujarat (1992) Guj. L.R.405, N.T. Desai V/s. State of Gujarat (1997)2 Guj. L.R. 942 and State of M.P. V/s. Ram Krishna Balothia (1995) 3 SCC 221 were referred and in paragraph 60 it was observed that the above Judgments correctly lay down the scope of exclusion as well as permissibility of anticipatory bail in cases under the Atrocities Act. In paragraphs 65 and 71 of the

decision it is observed that exclusion of provision for anticipatory bail will not apply when no *prima facie* case is made out or the case is patently false or mala fide. This may have to be determined by the Court concerned in facts and circumstances of each case in exercise of its judicial discretion. In cases under the Atrocities Act, exclusion of right of anticipatory bail is applicable only if the case is shown to bona fide and that *prima facie* it falls under Atrocities Act and not otherwise. Section 18 does not apply where there is no *prima facie* case or to cases of patent false implication or when the allegation is motivated for extraneous reasons. The view of Gujarat High Court in Pankaj D. Suthar (Supra) and N.T. Desai (Supra) was approved. The conclusions were formulated in paragraph 79 (Paragraph 83 of the same decision reported in AIR 2018 SC 1498) as follows:

“79.1. Proceedings in the present case are clear abuse of process of Court and are quashed.

79.2. There is no absolute bar against grant of anticipatory bail in the cases under Atrocities Act, if no *prima facie* case is made out or where on judicial scrutiny the complaint is found to be *prima facie mala fide*. We approve the view taken and approach of Gujarat High Court in Pankaj D. Suthar and N.T. Desai and clarify the Judgments of this Court in Balothia and Manju Devi.

79.3. In view of acknowledged abuse of law of arrest in the cases under Atrocities Act, arrest of a public servant can only be after approval by the SSP appointing authority and of a non-public servant after approval of S.S.P. which may be granted inappropriate cases, if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary inquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under Atrocities Act and the allegations are not frivolous or motivated.

79.5. Any violation of directions (79.3) and (79.4) will be actionable by way of disciplinary action as well as contempt.

79.6. The above directions are prospective.”

11. Pursuant to the aforesaid decision, the Union of India filed a review petitions viz. Review Petition (Cri.) Nos. 228 with 275 of 2018 in Criminal Appeal No.416 of 2018. The review petitions were decided on 1st October, 2019AIR 2019 SC 4917. The Union of India had filed the petition for review of above decision dated 20th March, 2018 in the case of Dr. Subhash Kashinath Mahajan (Supra). In review the Apex Court dealt with the conclusions formulated in the above decision. The Court considered the scope and object of the Act. The final conclusion is reflected in paragraph 67 of the decision in review petition which reads as follows:

“67. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of Constitution of India. Resultantly, we are of the considered opinion that directions Nos. (iii) and (iv) issued by this Court deserve to be and are hereby recalled and consequently we hold that direction No. (v), also vanishes. The review petition is allowed to the extent mentioned above.”

12. Direction No.(iii), (iv) and (v) which were recalled in above decision relates to approval of the appointing authority before arrest of public servant and SSP before arrest of non-public servant be granted in appropriate cases if necessary for reasons recorded and that reasons be scrutinized by Magistrate for permitting further detention. Conducting preliminary inquiry by DSP to find out whether allegations make out a case under Atrocities Act and that allegations are not frivolous or motivated. Violation of direction (iii) and (iv) will be actionable by way of disciplinary action and contempt. It is pertinent to note that direction No.79.2 (ii) viz.,

there is no absolute bar against grant of anticipatory bail in cases under under the Atrocities Act if no *prima facie* case is made out or where on judicial scrutiny the complaint is found to be *prima facie mala fide*, was not recalled.

13. Pursuant to the decision in the case of Dr. Subhash Kashinath Mahajan V/s State of Maharashtra (Supra) Section 18-A was introduced in the Atrocities Act which read as follows :

“18-A. (1) For the purposes of this Act. -

(a) Preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person,

against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(2) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.”

14. In the case of Prathviraj Chauhan V/s Union of India and Others (Supra) the petitioners questioned the provisions inserted by way of carving out Section 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It was submitted that Section 18-A has been enacted to nullify the Judgment in the case of Dr. Subhash Kashinath Mahajan V/s State of Maharashtra and Another (Supra). The Court referred to conclusions in decision of Dr. Subhash Mahajan (Supra). The Apex Court than observed that it is not disputed at the Bar that the provision of Section 18-A in the Act of 1989 had been enacted because of the Judgment in Dr. Subhash Mahajan’s case, mainly because of direction Nos. (iii) to (v) contained in para 83 (AIR 2018 SC 1498). The

Union of India had filed review petitions, and the same have been allowed and direction No. (iii) to (v) have been recalled. Thus, in view of the Judgment passed in review petitions, the matter is rendered of academic importance as the Court had restored the position as prevailed by various Judgments that were in vogue before the matter of Dr. Subhash Mahajan (Supra) was decided. Only certain clarification are required in view of provisions carved out in Section 18-A. There can be protective discrimination, not reverse one. It was further observed that concerning the provisions contained in Section 18-A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, the Court has recalled general directions (iii) and (iv) issued in Dr. Subhash Mahajan's case (AIR 2018 SC 1498). A preliminary inquiry is permissible only in the circumstances as per the law laid down in Lalita Kumari V/s. Government of U.P. (2014) 2 SCC 1 shall hold good as explained in the order passed by this Court in the review petitions and amended provision of Section 18-A have to be interpreted accordingly. Section 18-A (I) was inserted owing to the decision of this Court in Dr. Subhash Kashinath Mahajan V/s State of Maharashtra and Another (Supra) which made it necessary to obtain the approval of the appointing authority concerning a public servant and the S.S.P in the case of arrest of accused persons. Court had recalled that direction in Review Petition No.228 of 2018 decided on 1st October, 2019 (AIR 2019 SC 4917). Thus the provisions which have been made in Section 18-A are rendered of academic use as they were enacted to take care of mandate issued in Dr. Subhash Kashinath Mahajan V/s State of Maharashtra and Another (Supra) which no more prevails. The provisions were already in Section 18-A of the Act with respect to anticipatory bail. Concerning the applicability of provisions of

Section 438 of Cr.PC., it shall not apply to the cases under the Act of 1989. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act, 1989, the bar created by 18 and 18-A(i) shall not apply. This aspect has been clarified while deciding review petitions.

15. This Court in the case of Mr. ABC V/s State of Maharashtra and Another (Supra) while considering the appeal under Section 14-A of the Atrocities Act for grant of anticipatory bail had referred to the decision in the case of Prathvi Raj Chauhan V/s. Union of India (Supra) and observed that while considering the question of grant of pre-arrest bail under the Atrocities Act, there is scope for the Court to consider as to whether a *prima facie* case for applicability of the Atrocities Act is made out or not. On the facts of that case the Court noted that there was delay in registration of FIR. There was no reference to the allegation in the complaint lodged prior to registration of FIR. The appeal was allowed by granting pre-arrest bail to the appellant therein.

16. In the case of Swaran Singh and Others V/s. State of Maharashtra and Others, 2008 SCC 435. It was observed that the abuses on the caste should be uttered in the presence of independent witnesses. The independent person may not be those persons who are relatives or friends of complainant.

17. Applying the principles enunciated in the aforesaid decisions to the facts of the present case, I am of the opinion that apparently the allegations in FIR are an afterthought and concocted. The allegations are motivated. The complaint was lodged belatedly. The

allegations are vague. The complaint suffers from mala fides. The witnesses are interested in cause of complainant. Hence, the bar under Section 18 would not be attracted in the present case. For the reasons stated hereinabove, this appeal deserves to be allowed.

ORDER

- (i) The order dated 31st March 2021 passed by Special Court in Anticipatory Bail Application No.496 of 2021 is set aside;
- (ii) In the event of arrest of appellant in connection with CR No.14 of 2021 registered with Vanarai Police Station, Goregaon, Mumbai, the appellant be released on bail on his executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The appellant shall appear before Investigating Officer on 27th, 28th and 29th July 2022 between 11 am and 1 pm and thereafter as and when called for;
- (iv) The appellant shall not tamper with evidence and shall not threaten the witnesses;
- (v) In the event of breach of any condition, the complainant and/or prosecution would be at liberty to file application for cancellation of bail;
- (vi) Criminal Appeal stands disposed of.

(PRAKASH D. NAIK, J.)

MST