

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

CRIMINAL APPEAL NO. 443 OF 2023

Prashant Machindra Kurhe

VERSUS

1. The State of Maharashtra
Through the Investigating Officer
Shani Shingnapur Police Station,
Tal. Newasa, Dist. Ahmednagar

2. Pratik Balasaheb Adhav

Mr. Y. R. Neb, Advocate for the appellant
Mrs. R. P. Gaur, APP for the respondent/State
Mr. N. P. Chudiwal, Advocate for respondent No.2.

**WITH
CRIMINAL APPEAL NO. 438 OF 2023**

1. Sachin s/o Abasaheb Bhoge
2. Shubham @ Banti s/o Rohidas Karpe

VERSUS

1. The State of Maharashtra
Through Shani Shingnapur Police Station,
Tal. Newasa, Dist. Ahmednagar
2. The Superintendent of Police Ahmednagar
3. Pratik s/o Balasaheb Adhav

Mr. Y. R. Neb, Advocate for the appellant
Mrs. R. P. Gaur, APP for the respondents/State
Mr. N. P. Chudiwal, Advocate for respondent No.3.

CORAM : R. M. JOSHI, J.
DATE : 20th JULY, 2023

P.C. :-

1. Heard.

2. Applicants apprehend arrest in connection with Crime No. 78 of 2023 registered with Shanishingapur Police Station, Dist. Ahmednagar for the offences punishable under Sections 323, 504, 506 of IPC and under Sections 3(1)(r), 3(1)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Act').

3. The informant reported the incident occurred on 19th April, 2023 to the police stating that on that day orchestra was organized in the village. Number of persons had gathered to watch the same. There is allegation in the report for at about 10.40 pm thereafter present applicants came near him and abused him over his caste and insulted him in public view. It is also alleged that at that time he was beaten with fist and kick blows.

4. Learned counsel for the applicants states that there is delay in lodging FIR as the incident has occurred on 19th April, 2023 whereas the report is lodged on 24th April, 2023 without any justification or explanation for the delay. It is further contended that there are omnibus allegations made and that it is practically not possible that all accused in chorus will say one thing at a time by which the informant was abused

and insulted over his caste. He further states that in fact the informant was under influence of liquor and he was making obscene gesture to the women performer in the orchestra and hence he was asked to go back. It is contended that there is allegation made all the present applicants against the police that he was illegally detained by them.

5. Learned counsel for the informant states that there is bar created by Section 18 of the Act for invoking provisions of Section 438 of Cr.P.C. To support his submissions he placed reliance on ***Vasant Kerba Shinde V. State of Maharashtra, AIRONLINR 2021 BOM 1621, Anil Patel V. State of M.P. 2021 Cri.L.J.3319, Swaran Singh and Others Versus State Through Standing counsel and another, (2008) 8 SCC 435, Arumugam Servai Versus State of Tamil Nadu, (2011) 6 SCC 405, Prathvi Raj Chauhan Versus Union of India and others, (2020) 4 SCC 727***. It is his contention that the incident in question has occurred public view. He also claims that the informant was examined by Medical Officer wherein the injuries can be seen on his person. According him once *prima facie* the case is made out that offence punishable under the Act gets attracted, the relief of anticipatory bail cannot be extended to the applicants.

6. Learned APP also opposed the appeal by contending that the

informant was examined by the Medical Officer and the injury certificate shows that he has sustained injuries blunt trauma all over his body. Reference is made to the statements recorded during the course of investigation which according to her are sufficient to support the case of the informant.

7. No doubt provisions of Section 18 of the Act prohibits the applicability of Section 438 of Cr.P.C. It is however settled position of law it can also be gathered from the judgment in case of **Prathavi Raj Chauhan** (cited supra) where the prima facie case is made out, then only grant of anticipatory bail is prohibited. It is specifically held by the Hon'ble Apex Court that where prima facie case is not made out, anticipatory bail can be granted in appropriate circumstances. It is further held that the such relief can be granted in order to prevent the abuse of process of law and to avoid the miscarriage of justice.

8. Perusal of the first information report shows that there is allegation against all applicants that they made abusive statement over the caste against the informant. However any statement under the 164 of Cr.P.C he does not say so. He makes allegation only against one of the applicants. Thus, a doubt is crated as to whether his statements are true or not. Apart from this perusal of the order passed by the learned Addl.

Sessions Judge shows that the informant has made grievance against the police for his illegal detainment. This also creates reason to believe that some other incident had occurred than what has been alleged in the first information report. Not only there is inconsistency in the statement in the first information report as well as the statement under Section 164 of Cr.PC, it is difficult to digest that all the applicants in chorus made one statement at a time against informant. These facts assume importance considering the delay caused in by lodging of FIR. Though it is sought to be stated that the informant had been to the hospital, Ahmednagar however the injury certificate placed on record indicates that he was examined after two days of the incident. There is nothing to show that he was hospitalized at any point of time. Thus the delay in causing the first information report is not explained properly.

9. There is allegation of the applicants that some incident has occurred wherein the informant was required to be detained (whether really detained or not, not known at this stage) and in such circumstances there is reason to believe the arguments advanced by the counsel for the applicant that this could be a case of complete false implication. Though the learned APP has placed reliance on statements recorded of three persons during the course of investigation incidentally who are friends of the informant and belonging to the same caste. It is

unexplainable as to when number of persons had gathered from the village to watch the orchestra and the statements of the friends of the informant that to who were belonging to his caste only are recorded. Having regard of the above these facts serious doubt is created about the occurrence of incident as claimed by the informant. This Court, therefore, is of view that bar under Section 18 of the Act does not attract to the Appellants. Hence, liberty of the Appellants deserves to be protected, Hence, Appeals stand allowed.

10. Fees of the appointed counsel is quantified Rs. 10,000/- to be paid by the High Court Legal Services Authority, Sub Committee, Aurangabad.

(R. M. JOSHI, J.)

ssp