

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

953 CRIMINAL APPEAL NO.747 OF 2023

1. Bharat Dnyanoba Kande

2. Satish Dnyanoba Kande .. Appellants

Versus

The State of Maharashtra and Others .. Respondents

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Advocate for Appellants : Mr. Rajendra G. Hange & Mr. A.R. Hange

APP for Respondents No.1 & 2 : Mr. V.S. Badakh

Advocate for Respondent No.3 : Mr. A.M. Gaikwad

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CORAM : R. M. JOSHI, J.

DATE : SEPTEMBER 14, 2023

PER COURT :

. This appeal is filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order dated 08.08.2023 passed by learned Additional Sessions Judge, Kaij in Criminal Bail Application No.65 of 2023 rejecting application for anticipatory bail in connection with Crime No.148 of 2023 registered with Dindrud Police Station, Dist. Beed for the offences punishable under Sections 143, 147, 148, 324, 323, 327, 343, 346, 365 r/w. Section 149 of the Indian Penal Code and Sections 3 (1)(r)(s), 4(i)1(s) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (for short, 'Atrocities Act').

2. An FIR is lodged on 21.06.2023 in respect of the incident occurred on 20.06.2023 and 21.06.2023. It is the contention of the informant that he belongs to Scheduled Caste community. It is alleged by him that on 20.06.2023 his son Ashok was abducted from Dhaba. Though enquiry was made, Ashok was not found. On 21.06.2023 at around 08:00 a.m., he went to the house of Ashok at Sangam Pati and at that time he received phone call from one mobile number. The caller told him that he is Bharat Kande and demanded Rs.Two Lakh for releasing Ashok. On asking question to the caller the reason for which the amount is to be paid, he was informed that Ashok had obtained the said money for purchase of tractor. He also states that he had talked on conference call with Ashok and Ashok also told him to pay Rs.Two Lakh. Thereafter, he went to the house of Bharat and found that he was not at home. He, therefore, went to police station and lodged report.

3. Learned counsel for the appellants submits that there are disputes between the parties over the repayment of money

obtained by son of the informant towards labour charges. It is his contention that no immediate report is lodged though it was within the knowledge of the informant that his son Ashok was abducted by someone. It is his further submission that belated report itself is sufficient to indicate that it is the case of false implication. As regards the offences under the Atrocities Act it is submitted that there is absolutely no material to indicate commission of such offences and hence bar of Section 18 does not get attracted to the present application. Finally, he submitted that after conclusion of investigation charge-sheet has been filed and hence this is not a fit case for custodial interrogation.

4. Learned counsel for the informant and learned APP opposed the said submissions by placing reliance upon the investigation papers which include the statement of Ashok as well as witnesses who had seen the Ashok being abducted by appellants and others. According to them, there is specific statement made by Ashok about he being abused and insulted over the caste and as such the offences made out under the Atrocities Act and consequently the bar is created to grant anticipatory bail.

5. Perusal of the First Information Report shows that on 20.06.2023 itself it was within the knowledge of the informant that his son has been abducted. It does not stand to any reason as to why no immediate FIR has been lodged in this regard. Further, in the FIR lodged on 21.06.2023 it is stated that at around 08:00 a.m. he received a phone call from appellants demanding Rs. Two Lakh for release of Ashok. In spite of this, no report is lodged till 06:30 p.m. In the report, he states that he had talked with Ashok on conference call and Ashok told him to pay Rs. Two Lakh to the appellants and hence the informant went to the house of appellants for paying Rs. Two Lakh, but he was not at home. As against this, the statement of Ashok shows that the informant had been to the house of appellants with money and when he offered the money to him, the appellants refused to accept it. If it is the case of the abduction for the purpose of extortion of money, it does not stand to any reason as to why the abductor will refuse to accept the money.

6. Apart from this, there are material inconsistencies in the statement of the Ashok and other witnesses with regard to the occurrence of the incident. Ashok claims that his car was also taken by the abductors with them, whereas the brother of Ashok claims that

he went to the spot and took the car to his house. Besides, the prosecution relying upon the statement of the witness who claims to have seen one unknown person being assaulted by other unknown persons. On the basis of such statement, it is sought to be convinced that the said unknown person is Ashok and he was being assaulted by the appellants and others. Perusal of the charge-sheet does not show that any attempt was made by the investigating agency even to identify from such witness that he had seen Ashok being abducted and assaulted by anyone.

7. In the light of this, it is also relevant to note that the informant initially has not disputed the transaction between appellants and Ashok in respect of providing of labour, however he retracted from the said statement so also Ashok had come out with altogether different story. As far as the allegations of insult and abuse over the caste of the Ashok is concerned, the initial statement recorded by him does not show any such allegation and the statement recorded after seven days of the incident is nothing but an improvement.

8. Having regard to the fact that there are disputes between the parties over the monetary transaction, false implication of the appellants cannot be ruled out. This Court, therefore, finds no reason to negate the contention of learned counsel for the appellants that *prima facie* no case is made out against the appellants for the offences under the Atrocities Act and therefore no custodial interrogation of the appellants is necessary. Hence, following order:

ORDER

- (i) Criminal Appeal stands allowed.
- (ii) In the event of arrest of the appellants in connection with Crime No.148 of 2023 registered with Dindrud Police Station, Dist. Beed for the offences punishable under Sections 143, 147, 148, 324, 323, 327, 343, 346, 365 r/w. Section 149 of the Indian Penal Code and Sections 3 (1)(r)(s), 4(i)1(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they shall be released on bail on furnishing PR Bond of Rs.15,000/- (Rupees Fifteen Thousand only) each, with one surety in the like amount each.
- (iii) They shall attend the concerned police station as and when called with written intimation.
- (iv) They shall not contact the witnesses directly or indirectly.

- (v) They shall not interfere with the evidence in any manner whatsoever.
- (vi) They are further directed to cooperate the investigating agency for further investigation.

[R. M. JOSHI]
JUDGE

GGP