

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1015 OF 2023

Alka Pravin Patil .. Appellant
Versus
The State of Maharashtra .. Respondent

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Mr. Dhananjay Rananaware for the appellant.
Mr. Rahul K. Dhaygade with Mr. Dipak Y. Jadhav, Ms. Ekta Patil
for respondent no.2.
Mr. Y.M. Nakhwa, APP for the State.
Mr. N.S. Yadav from Satara City police station.

CORAM: BHARATI DANGRE, J.
DATED : 8th NOVEMBER, 2023

P.C:-

1 The Hon'ble Apex Court in case of *Prathviraj Chavan Vs. Union of India and ors*¹, has held to the following effect :

“33 I would only add a caveat with the observation and emphasise that while considering any application seeking pre-arrest bail, the High Court has to balance the two interests: i.e. that the power is not so used as to convert the jurisdiction into that under Section 438 of the Criminal Procedure Code, but that it is used sparingly and such orders made in very exceptional cases also that if such orders are not made in those classes of cases, the result would inevitably be a miscarriage of justice or abuse of process of law. I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely a essential, because a liberal use of the power to grant pre-arrest bail, would defeat the intention of Parliament.”

1 AIR 2020 SC 1036

2 The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 being a special enactment, with a provision in form of Section 18 and amended provisions of Section 18A, by this time, it is settled position of law that if no *prima facie* material exist, warranting arrest in a complaint, the Court has the inherent power to direct the pre-arrest bail.

It is therefore, necessary to ascertain whether there is a *prima facie* case against the present appellant who seek his pre-arrest bail in connection with C.R.No. 628/2023 registered with Satara City police station on 11/8/2023, involving Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with Sections 504, 506 r/w Section 34 of IPC.

3 The complainant who belong to Scheduled Caste reported to the police station and narrated about an incident which took place on 7/6/2023, when he was called by the two accused persons by making a phone call and accordingly, when he was dropped at the spot by his and he went into a xerox shop, where both the accused were present. In respect of some land deal, he inquired with the present appellant and he was asked to wait. Thereafter, he came on the road and was waiting for his son to come back to pick him up, when both the accused persons approached him.

The complainant once again requested the present appellant to return the money or either transfer the land in his name, upon which she intentionally insulted him by uttering the following words :-

"अरे पम्या ढोरा, मराठ्याच्या नादाला लागु नको. ढोरे कधीच सुधारणार ढोरा काही झाले तरी तुला मी पैसे देणार नाही."

He was also abused by the accused no.2.

The present appellant threatened him with dire consequences. At that time, one person who was his friend, present in the xerox shop arrived and even one Santosh Salunkhe, who was passing by, stopped and inquired as to what had caused the quarrel.

The above narration resulted in registration of the C.R and the appellant is apprehending her arrest in the same, as the Special Judge has rejected the relief sought.

4 Heard the counsel for the appellant, who would submit that there is no prima facie case against the appellant and this could be discerned from several circumstances; the first being a delay in lodging of the complaint; the second being the persons who have heard the abuses being recorded, the friends of the complainant and thirdly, the inconsistencies and contradictions that appear from the statement of the complainant and the witnesses.

Dealing with the said objection, the learned counsel for respondent no.2 and the learned APP would submit that the complainant had also approached the concerned authorities, but no cognizance was taken. The learned counsel Mr.Dhaygude would rely upon his reply affidavit, to demonstrate the financial dealing with the two accused persons, and he has also placed on record his first complaint dated 12/6/2023 addressed to the Dy.S.P, Zilla Parishad, Satara, and the second complaint addressed to the Police Superintendent, Satara dated 1/8/2023.

The learned counsel would submit that despite the complaints being lodged, no offence was registered and it is only when he threatened that he shall self immolate himself, the complaint came to be registered.

5 In this case, mere delay would not negate the case against the accused persons, if a plausible explanation is offered for the delay at the time of trial.

As far as second submission of the learned counsel for the appellant is concerned, it is to be noted that the requirement of attracting the offence of Sections 3(1)(r) and 3(1)(s) of the Act of 1989 is concerned, it is necessary that abuses on the caste should be uttered in public view, though the relevant provisions do not use the word 'public place'.

The above terminology was subject matter to interpretation on more than one occasion and in case of the Apex

Court in *Swaran Singh and ors Vs. State of Maharashtra*,² has propounded upon the aforesaid terminology in the following words, by keeping in mind the object with which the statute was enacted, being to prevent indignities, humiliation and harassment to the members of the Scheduled Caste and Scheduled Tribes.

The relevant portion of the said judgment deserve a reproduction and it read thus :-

“28 It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by appellants 2 and 3 (by calling him a Chamar) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offences been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g in a lawn outside a house, and the lawn can be seen by someone from the road or land outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression place within public view with the expression public place. A place can be a private but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality by the State, and not by private persons or private bodies.”

6 Further, in case of Hitesh Verma vs. State of Uttarakhand the said term was again interpreted and the observations in para 11 and 13 is of significance and reproduce thus :-

2 2008 SCC 435

“11 It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act No. 1 of 2016 w.e.f. 26.1.2016. The substituted corresponding provision is [Section 3\(1\)\(r\)](#) which reads as under:

“3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

12. The basic ingredients of the offence under [Section 3\(1\)\(r\)](#) of the Act can be classified as “1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and 2) in any place within public view”.

13. The offence under [Section 3\(1\)\(r\)](#) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment.

The decision in case of Swarna Singh and ors (supra) was also relied upon while making the aforesaid observations.

Hence, from the authoritative pronouncements to the above effect and since the term used in Section 3(1)(r) and 3(1)(s) has been subject matter of discussion in several cases, it is relevant to note that the abuses should be hurled in a public view i.e. a place which has presence of public, in contrast to a public place, where no member of public is present.

7 Though the counsel for the appellant has strenuously argued that utterances should be necessarily in the presence of independent witness, which shall necessarily exclude the relatives or friends of the complainant, there can be no quarrel about the said proposition which flows from several precedents but in this peculiar facts, the two persons who witnessed the incident, coincidentally, happened to be friends of the complainant, but they are the chance witness who were present, as one of the witness has stated that while he was riding his motorcycle, he could notice ongoing quibble on the road, in front of Satara City Police Station, and the other witnesses categorically has stated that he happened to be in the xerox center and when he heard the quibble down the centre, he arrived at the spot and found one lady and one gentleman having a brawl, with the complainant and he inquired as to what was the cause and later on, it was revealed to him that it were these two accused persons.

8 Though the two witnesses appear to be friend/acquaintance of the complainant, at this stage, it cannot be said that they are interested as they happened to be at that place by chance and they viewed the incident taking place, when the appellant abused the complainant.

9 As far as his son is concerned, he also had a reason to be there, since he came to pick up father. The effect of the statements of these three persons will have to be ultimately determined at the stage of trial but apparently, it is evident that

the incident had taken place on the road in presence of public as one of the witness has said that members of the public were passing on the said road.

The counsel has also attempted to point out the contradictions and inconsistencies in the version of the complainant and the witnesses, but I must make it clear to him that it is a matter of trial and at this stage, as per the decision of the Apex Court in case of *Prathviraj Chavan* (supra), it is only necessary to look into a prima facie case, and if such case is not made out, then the bar u/s.18 apply.

However, in this case, I am of the opinion that prima facie reading of the FIR, the case is made out against the present appellant and therefore, in view of the bar u/s.18 shall, she is not entitled to the relief.

Upholding the impugned order, the Appeal stand dismissed.

(SMT. BHARATI DANGRE, J.)