

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.55 of 2023

Anil Vasant Nikam .. Appellant
Versus
The State of Maharashtra & Anr .. Respondents
...

Mr.Adwait Bhonde with Omkar Phadtare for the appellant.
Mr.S.R. Agarkar, APP for respondent no.1.
Mr.Drupad Patil Legal Aid Appointed Advocate for respondent no.2.
Mr.Ganesh Kindre, Dy.SP from Koregaon, Satara.

CORAM: BHARATI DANGRE, J.
DATED : 14th MARCH 2023

P.C:-

1 By a detail order dated 23/1/2023, the applicant was admitted to an interim order, in the Appeal filed u/s.14-A of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant was arraigned as an accused in C.R.No. 300 of 2022 registered with Borgaon police station, Satara on 14/12/2022, which invoke Sections 380, 454, 457, 504, 506 of the IPC and Section 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act, 1989.

2 On the respondent no.2 being served, I have heard the learned counsel for the appellant, learned counsel for respondent no.2 as well as the learned APP.

Section 18 of the Act of 1989 creates a special bar for grant of Anticipatory Bail u/s.438 of Cr.P.C. However, the Hon'ble Apex Court in case of *Prithvi Raj Chavan Vs. Union of India and ors, (2020) 4 SCC 727* has clearly that when an offence is registered against a person under the provisions of Scheduled Caste and Scheduled Tribe Act, no Court can entertain an application for Anticipatory Bail, unless if prima facie finds that an offence under the Act is not made out. It is also clearly held that by considering such an application, scope for appreciating of evidence and other material on record is limited, as the Court is not expected to indulge any critical analysis of the evidence on record, particularly since the Special Act has been held to have been enacted to protect the persons belonging to Scheduled Caste and Scheduled Tribe, an embargo has been created in granting Anticipatory Bail and therefore, the provisions of Special Act cannot be easily brushed aside by elaborately discussing the evidence.

Hence, if the complaint do not make out a prima facie case for the applicability of provisions of 1989 Act, the bar created by Section 18 and subsequently inserted Section 18-A(1) shall not apply.

3 In the wake of the said position of law, when the FIR is perused, it can be seen that the alleged incident which has resulted in invocation of Section 3(1)(r) and 3(1)(s) occurred on 14/12/2022, when it is alleged that the appellant visited the house of the complainant and confronted him as to how the father has transferred the land by a registered sale deed, and it is alleged that he hurled casteist abuses at him. The narration of the incident as contained in the complaint would reveal that the entire incident took place inside the house of the appellant and there is no assertion that it occurred within 'public view', as contemplated u/s.3(1)(r)(s).

There are no witnesses to the said incident and in terms of the law that has been laid down by the Hon'ble Apex Court, a *prima facie* case need to be appreciated to ascertain whether the offence under the Atrocities Act has been made out.

4 In the present case, on perusal of the FIR, since *prima facie*, a case is not made out, and since the only section that has been invoked in the subject C.R, is 3(1)(r) and 3(1)(s) along with Section 3(2)(va) of the Atrocities Act, I deem it appropriate to confirm the interim relief granted in favour of the applicant by an order dated 23/1/2022.

Appeal stands allowed.

5 Before parting, I would also like to place on record appreciation for Mr.Drupad Patil, who was appointed by the legal

services authority to represent the complainant and who has rendered his assistance effectively. The Legal Services Authority shall make payment of remuneration due and payable to him, within a period of four weeks from today.

(SMT. BHARATI DANGRE, J.)