



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.647 OF 2023**

Ramesh Raghoba Thorat ..Appellant
VS.
The State of Maharashtra and anr. ..Respondents

Adv. Amol Patankar a/w Adv. Vatsal Thakkar for the Appellant.

Mr. Y. M. Nakhwa, APP for Respondent No.1-State.

Adv. T. D. Deshmukh a/w Adv. Sagar Kursija i/b. Adv. H. D. Chavan for Respondent No.2.

API Nitin Netaji Atkare, Shikrapur Police Station, Pune Rural.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 18, 2023

P.C. :

1. Heard learned counsel for the Appellant, learned APP for the State and learned counsel for Respondent No.2.

2. This is an appeal for pre-arrest bail in connection with C.R. No.484 of 2023 registered with Shikrapur Police Station, Pune (Rural) on 22.05.2023 for the offences punishable under Section 353, 504 of the Indian Penal Code (hereafter "IPC", for short) and under Sections 7(1)(d), 3(1)(r), 3(1)(s) and 3(2)(va) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "Atrocities Act", for short).

3. By an order dated 14.06.2023 this Court while granting interim protection to the Appellant observed thus :-

"3. The case of the complainant is that, she is working as Talathi. On 22nd May 2023 while she was discharging her duties, the appellant had abused her on the basis of caste.

4. The First Information Report does not refer to the presence of any other person at the time of alleged abuses on caste. From the order passed by Sessions Court it appears that, the complainant has made reference to the presence of the other witnesses in the supplementary statement.

5. Learned Advocate for the appellant submitted that, there are various complaints against the complainant by the villagers about her inaction in performance of duties. The appellant is member of gram panchayat. On 28th April 2023, resolution was passed which was seconded by the appellant as a member of gram panchayat with regard to the grievance of the villagers about the inaction on the part of complainant in performing her duties.

6. Considering the aforesaid circumstances, interim protection can be granted to the appellant."

4. I have gone through the FIR. A reading of the FIR indicates that though there are allegations of abuse on caste, no witnesses have been mentioned before whom the abuse are made. The complainant is a Talathi. The Appellant was previously the Deputy Sarpanch of the Gram Panchayat and presently the member of the Gram Panchayat.

On record are complaints made, one of the dated 02.05.2023 to the Tahsildar raising grievance against the complainant about the unsatisfactory manner in which the work is being discharged by her. There are further allegations as to the manner in which the complainant is performing her duties thereby causing a lot of inconvenience to the general public who are suffering. At page 36 is the Resolution dated 28.04.2023 which is seconded by the Appellant for taking steps to request the authorities to transfer the complainant.

5. In the FIR there is no mention of independent witnesses. The supplementary statement is recorded on the next day of lodging of the FIR. In the said supplementary statement the complainant stated that the incident occurred in front of four independent witnesses. From the reading of the statement it appears that the witnesses have some or the other work pending with the Talathi. They can be said to be interested witnesses. *Prima facie*, the possibility of a false implication cannot be ruled out in the facts of the present case.

6. Learned counsel for Respondent No.2 relied upon the decision of the Apex Court in the case of **Prathvi Raj Chauhan Vs. Union of India and others**¹. Drawing my attention to paragraph 33, learned counsel submitted that the power to grant pre-arrest bail is not to be 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 are to be made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and further 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. Learned counsel submitted that a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.

7. Learned counsel for the Respondent No.2 also relied upon the past antecedents against the Appellant. One FIR is of the year 2019 under Sections 341, 347 read with 34 of the IPC in connection with cheque bouncing case. The next FIR is of the year 2020 under Sections 504 and 506 of the IPC. There is a criminal complaint of the year 2019 filed

¹ (2020) 4 SCC 727

before the Judicial Magistrate First Class, Ghodnadi (Shirur) under Sections 166, 504, 506 read with 34 of the IPC. One criminal complaint of the year 2013 under Sections 504, 506, 420 read with 34 of the IPC. Two N.C.'s registered with Vadgaon Maval Police Station and Shirur Police Station in the year 2023 are against unknown persons and it is suspected that the Appellant the one who is responsible. In my opinion, the antecedents are not such that the facility of pre-arrest bail should be refused to the Appellant particularly when I am of the view that the FIR does not make out a prima facie offence against the Appellant.

8. Learned counsel for the Appellant on instructions submits that he will not visit the premises of the Talathi's office for the next one year except with the leave of the trial Court. The Appellant assures that he will abide by the statement.

9. The Appeal is allowed by confirming the interim order passed by this Court on 14.06.2023 and in terms of the interim order. The impugned order is set aside.

(M. S. KARNIK, J.)