

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.829 OF 2022

Mahadev Piraji Bhise .. Appellant
Versus
The State of Maharashtra & Anr. .. Respondents

WITH
CRIMINAL APPEAL NO.926 OF 2022

Mahadev Piraji Bhise .. Appellant
Versus
The State of Maharashtra & Ors. .. Respondents

...

Mr.Subhash Jha with Mr.Ganesh Patil , Ms.Linisha Seth with Mr.Praveen D. for the Appellant in both the Appeals.

Mr.Aabad Ponda, Senior Advocate with Mr.Sanjeev Kadam, Mr.Siddharth Karpe i/b Mr.Vishwajeet V. Mohite for the Respondent No.2 in both the Appeals.

Mr.S.R.Agarkar, A.P.P. for the State.

Ms.Ashwini R. Shendage, SDPO, Dahiwadi Camp, Vaduj, Satara.

...

CORAM: BHARATI DANGRE, J.
DATED : 16th OCTOBER, 2023

P.C:-

1. The two Appeals, instituted under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "**the Atrocities Act**"), raise a

challenge to two distinct orders passed by the Additional Sessions Judge, Satara in Special Atrocity Case No.140 of 2022, thereby admitting Respondent No.2 in both the Appeals, who came to be arraigned as accused, to bail on completion of investigation and filing of charge-sheet, by a reasoned order.

2. The first Appeal being APEAL/829/22 is filed, being aggrieved by the interim protection granted on 06/08/2022, whereas the second Appeal i.e. APEAL/926/22 is filed, assailing the confirmation of the said order on 12/08/2022. The Appeals are filed by the Complainant, who is aggrieved by the above impugned orders and I have heard Mr.Subhash Jha for the Appellant/the original Complainant, learned senior counsel Mr.Ponda with Mr.Sanjeev Kadam, representing Respondent No.2-Jaykumar Gore in both the Appeals.

Mr.Jha would assail the impugned orders and, in particular, order dated 06/08/2022, passed by the Additional Sessions Judge as being perverse and passed in utter violation of settled principle of law, as regards the custodial interrogation of the accused. He would describe the present case as a sharp practice in order to procure unfavourable orders and this according to him, is done right in the teeth of the orders passed by the High Court.

Mr.Jha would pose a question in the Appeals and in his own words of significant importance, to the effect that when the Sessions Judge as well as the High Court has rejected an application for anticipatory bail, by recording a finding that the custodial interrogation of the Accused is very much

necessary, in that case, whether the impugned order which released the Accused on bail, can be held to be a legal and appropriate order.

He would specifically submit that if a judicial officer has been actuated by a oblique motive or corrupt practice, then on appraisal of the material on record, it is imperative for this Court to exercise it's control over the subordinate court, by exercising the power conferred, under Article 235 of the Constitution of India and this aspect should not be ignored, as some stringent action is warranted in the peculiar facts.

3. What are those peculiar facts, which warrant such action, are narrated by Mr.Jha and placed before me sequentially, and I prefer to unfold them, as submitted.

The subject C.R. registered with Dahiwadi Police Station on 14/04/2022 invoke Sections 419, 420, 467, 423, 426, 465, 468, 471, 193, 199, 200, 205, 209 read with Section 34 of the Indian Penal Code (for short, **"the IPC"**) and Sections 3(1)(f) and 3(1)(g) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, **"the Atrocities Act"**) against three named persons and two unknown persons.

According to Mr.Jha, the complainant-Mahadeo Piraji Bhise, by lodging a complaint, set the investigating machinery in motion, when he alleged that by forging the Aadhar card and with an intention to defraud his family, the accused persons in conspiracy, prepared a false affidavit in the name of his father-Piraji Bhise, who is passed away on 08/10/2016 and this affidavit was presented before the Assistant Director,

Town Planning Satara and Sub-Divisional Officer, Man. It is also alleged that, his father was not having any knowledge of English language, but the affidavit bears signature in English and the photo affixed is of some unknown persons.

In the wake of these allegations, the subject C.R. came to be registered.

4. I need not delve deep into the said aspect, as it is not necessary for me to do so.

Jaykumar Gore, who was arraigned as an accused, filed an Anticipatory Bail Application No.94 of 2022, before the Additional Sessions Judge, Vaduj, seeking protection from arrest, where he specifically pleaded that he is sitting M.L.A. of Man-Khatav Constituency for last 13 years and he has rendered co-operation in the investigation. It was specifically pleaded by him that he was falsely implicated in the subject C.R., on account of his position and due to rivalry in controlling the Education Society, with the aid of the Ex-President of the Trust, which was registered in the year 2006 though he has no concern with the said Trust, prior to 2016.

The aforesaid application was rejected by the Special Judge and Additional Sessions Judge, Vaduj on 06/05/2022, by recording that there is a strong prima facie material that the accused persons, in furtherance of their common intention, had committed the offence and there is strong material to point out that the accusations against the Applicant are well founded. It was also specifically observed that the original document is not yet seized in connection with

the offence and at the same time, the identification parade is to be conducted, as there are allegations of preparation of false and bogus document. Hence, it was observed that custodial interrogation of the Applicant as well as the other accused is necessary by considering the gravity of the offence, and the application came to be rejected.

5. This order was assailed before the Division Bench in Cri. Appeal No.506 of 2022 and in the wake of the material placed before the Court by the prosecution, reference was made to the statement of one Smt.Ushatai Sopan Sable, Head Clerk, Tahsildar Office, who had categorically stated that, affidavit in question was executed by Piraji Vishnu Bhise and Accused Jaykumar Gore (Respondent No.2 herein) in her presence and she has verified the Aadhar Card of both the parties.

It was thus inferred that the Appellant (Jaykumar Gore) was very much present at the time of execution of memorandum of understanding-cum-affidavit and the defence of the learned senior counsel for the Appellant can very well be looked into at the time of trial, as this amount to serious circumstance against him, since Piraji Vishnu Bhise had expired on 08/10/2016. In the wake of the above, the Appeal came to be dismissed on 14/06/2022.

It is to be noted that on 11/07/2022, on completion of investigation, the charge-sheet is filed.

6. Being aggrieved by the order passed by the High Court, the Appellant approached the Hon'ble Supreme Court and on

01/07/2022, the notice came to be issued and on 13/07/2022, the following order was passed, which I must reproduce in entirety;

- “1. Applications seeking exemption from filing certified copy of the impugned order as also for seeking exemption from filing official translation of the Annexures are allowed.
2. It is submitted by the learned counsel appearing for the State of Maharashtra that the charge-sheet has been filed in the matter.
3. In view of the above, we direct the petitioner to surrender before the Trial Court and apply for regular bail.
4. In case such an application for regular bail is filed by the petitioner, the Trial Court is directed to dispose of the same expeditiously, on its own merits and in accordance with law, uninfluenced by any observations made by this Court or the High Court, in the earlier round of litigation related to admitting the petitioner to bail.
5. The Special Leave Petition is disposed of on the afore-stated terms.”

7. Petition(s) for Special to Appeal was again listed before the Bench of three-Judge headed by the Hon’ble The Chief Justice, when extension of the earlier protection was prayed for, and on 26/07/2022, the following order is passed :-

- “5. Having heard learned Senior counsel appearing on behalf of the petitioner as also learned counsel appearing on behalf of the respondent-State, we permit the petitioner to surrender before the Trial Court within a period of two weeks from this date. Till then, interim protection against arrest is granted to the petitioner.”

8. The aforesaid sequence of events is not in dispute, as it is borne from the record.

A significant development, according to Mr.Jha, is filing a Transfer Application by the Accused under Section 408 of the Code of Criminal Procedure (for short, “**the Cr.P.C.**”) before the Principal Judge, Satara on 21/07/2022. According to Mr.Jha, the presentation of such application was not brought to the

notice of the Apex Court, when the matter was listed before it on 26/07/2022 and this application is clamped as a sharp practice and Mr. Jha in his usual assertive style advanced exhaustive submissions to drive home his point, but I did not deem it necessary to go into its details, as this application seeking transfer of proceedings was allowed by the Principal Judge on 03/08/2022.

The accused persons had moved distinct applications for transfer of their case, on the ground of apparent bias and the instances were brought to the notice of the Sessions Judge. The applications were vehemently opposed by the State, by submitting that there existed no legal and valid grounds for transfer.

The Sessions Judge considered the said applications and allowed them, by recording one important facet, that the concerned Court ought to have decided the applications filed seeking bail on priority basis, but instead it was kept pending by the Additional Sessions Judge, Vaduj for more than 20 days and, therefore, in order to have fair opportunity to the accused, since they apprehended bias on part of the concerned Court and, since, the transfer could not have caused any prejudice to the Complainant or the State, the matters in connection with the subject C.R. were withdrawn from the Court of Additional Sessions Judge, Vaduj and they were transferred to the Court of Additional Sessions Judge, Satara for disposal as per law on merits.

9. It is submitted by Mr. Jha that this order is assailed by the Complainant, by filing Writ Petition before this Court,

which is pending for admission. In any case, it is not expected for me to go into the correctness of the said order and suffice it to note that the proceedings were transferred to some other Court.

10. Another development, which is of significance according to Mr.Jha is, an order passed by the Division Bench in Cri. Writ Petition No.2621 of 2022, which was once again filed by the Complainant, where he raised a challenged to the order dated 05/07/2022, passed by the Superintendent of Police, Satara and he was aggrieved by the fact that the investigation was transferred to Dy.S.P. Ganesh Kindre from SDPO Dr.Nilesh Deshmukh and, since, Dr.Nilesh Deshmukh was investigating the case, prior to filing of the charge-sheet, the order was prayed to be set aside.

11. On hearing the Writ Petition, making such a grievance, the Division Bench of the High Court passed the following order :-

“4. Learned APP, on telephonic instructions from the Superintendent of Police, states that in addition to Mr.Kindre, Dr.Nilesh Deshmukh will be appointed to investigate the said C.R. i.e. C.R.No.92 of 2022, registered with the Dahiwadi Police Station and that the same will be done by tomorrow i.e. 5th August, 2022.

5. Learned Counsel for the petitioner has no objection, as long as Dr.Nilesh Deshmukh is also appointed to investigate the said case alongwith Mr.Kindre.”

It was, therefore, expressed that, both the Investigating Officers shall investigate the subject C.R., fairly and impartially.

12. Mr.Jha has a serious grievance about this order and he would submit that the fact of filing of charge-sheet was not brought to the notice of the High Court, but I find his submission to be incorrect, as paragraph 3 of the order itself record the contention of the Petitioner that some days prior to filing of the charge-sheet, Dr.Nilesh Deshmukh was investigating the case.

In any case, when I enquired from the learned A.P.P. Mr.Agarkar, whether any further investigation is carried out after the charge-sheet is filed on 11/07/2022 and whether any supplementary charge-sheet is filed, his answer is in the negative.

13. The order of the Hon'ble Apex Court dated 13/07/2022 assumes significance and Mr.Ponda, the learned senior counsel, is right in submitting that the Appeal filed by the Accused, challenging the refusal of the anticipatory bail by the High Court as well as the Sessions Court, was not rejected and the prayer was not refused, but Their Lordships took into consideration the subsequent development in the matter; being filing of the charge-sheet.

In view of this development, it was directed that the Petitioner shall surrender before the trial Court and apply for regular bail and it was also directed that if such an application is made, the trial Court shall decide it on merits and in accordance with law, uninfluenced by the observations made by the Court or the High Court in earlier round of litigation.

14. In compliance of the above liberty conferred upon the Petitioner, Accused Jaykumar Gore surrendered before the Special Judge and by an order below Exh.1, he was taken in custody.

Simultaneously, the application filed by him for interim bail was considered on merits and by a detailed order, he was held entitled for interim protection and the relevant material, which weighed with the learned Judge is to be found in the following paragraph of the longish order, which read to the following effect :-

“27.Today, while hearing this application, the forensic report is filed and it states that, thumb impression of accused No.1 Jaykumar does not tally. The investigating officer is present in the court, he did not submit any other forensic investigation about signature of the accused No.1 Jaykumar, though he was murmuring, while submitting about the forensic report filed on the record.

28. On perusal of record it clearly reveals that, as per order dated 10-05-2022 the original affidavit/agreement of understanding date 11-11-2020 and original sanction letter of the town planning dated 06-01-2021 was kept in safe custody of the court by the Judicial Magistrate First Class, Dahiwadi. As per order dated 12-05-2022 it was handed over to Shri. Santosh V. Tasgaonkar, Assistant Police Inspector of Dahiwadi police station.

On perusal of statements of witnesses recorded (as discussed above), it prima facie appears that, the colour copy or true copy was shown to the witnesses from Setu Office, Tahasil Office. Moreover 26-05-2022 when the supplementary statement of witness Ushatai was recorded at that time also a colour photocopy as well as true copy was shown to the witness for the identification of documents in dispute.”

15. Concluding that there was sufficient opportunity for the investigation of the matter during which the statements of the witnesses, including the Revenue Department are recorded, as the Facilitatory relief is in favour of the Applicant, on the basis of the material available, the learned Judge held him entitled for protection from arrest, by an interim order.

Pertinent to note that the Complainant filed his reply to interim bail application, as he was the necessary party in view of Section 15-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and he appeared suo-motu.

This order was confirmed on 12/08/2022, by taking into consideration the submission advanced on behalf of the Complainant and a specific observation made in the order reflect that on perusal of the disputed affidavit, the date of the affidavit is not mentioned, but on the last page, office endorsement is to be found. Who has scribed the contents of the affidavit is also not mentioned, where it was typed is also not mentioned, Aadhar Card numbers are also not mentioned. Most of the spaces in the content of the affidavit are blank like the area of Gat number, population of village etc. and it is also recorded that though the original affidavit was not placed before the learned Judge, there is no thumb impression or signature on each page of the affidavit. It is also recorded that on perusal of the statements of the witnesses recorded, it prima facie appears that the colour copy or true copy was shown to the witnesses from *Setu* Office, Tahasil office and even the witness, Ushatai was also confronted with colour photocopy.

After having a detailed analysis of the document in question and by referring to the proceedings before the Revenue Authorities, the Special Judge recorded that the investigating agency has recorded the statements of 42 witnesses and seized 185 documents and filed the charge-sheet.

As per charge-sheet, it is not the prosecution case that any investigation is pending due to non arrest of the Accused, who had moved for bail, and once the investigation is complete and the material collected is placed in the charge-sheet, the interim order dated 06/08/2022 deserve confirmation.

16. Mr.Jha would lay his emphasis upon the aspect of release of the Accused on bail, despite the fact that the Sessions Court and the High Court has rejected the anticipatory bail application and had opined that custodial interrogation of the Accused is very much necessary. He would question the undue haste in filing the charge-sheet, as according to him, the custodial interrogation was very much necessary and even the High Court had expressed so.

The clear answer to the argument of Mr.Jha, is to be found in the order of the Apex Court, when the cognizance was taken of the important development of the charge-sheet having been filed and, that is the specific reason, why the Apex Court granted time for the Accused to surrender and a direction was issued that his bail application, obviously filed under Section 439, shall be decided on merits.

The Apex Court was cognizant of the fact that he had approached the Court, on being refused protection from arrest under Section 438 of Cr.P.C., but when it was informed that the charge-sheet is filed, Their Lordships permitted him to surrender and move an application for bail. Accused Jaykumar Gore/Respondent No.2, taking clue from the above direction, surrendered himself and thereupon the Court

decided his application on merits, on the touchstone of Section 439 of Cr.P.C.

17. It is important to note that once the charge-sheet is filed, the issue of custodial interrogation of the accused vanished into thin air, as the Investigating Officer did not insist upon his custodial interrogation. Even today, the learned A.P.P. Mr.Agarkar makes a categorical statement that after filing of the charge-sheet, they never desired to arrest Respondent No.2, as no further investigation is required to be carried out.

18. Reliance of Mr.Jha on the decision of ***Bimla Devi (Smt) Vs. State of Bihar & Ors.***¹ do not take his case any further, as it is a case where despite rejection of the two earlier bail applications by the High Court, the Magistrate released the accused on provisional bail and this was held to be contrary to to judicial propriety as well as the statutory provision. The observations made in the said judgment, commenting upon the course adopted by the Magistrate, do not apply to the present case since here, the Sessions Judge, upon an application being moved in the wake of the statutory provision, seeking transfer of proceedings, allowed the same and in the wake of the direction issued by the Apex Court that upon surrender, the application filed by the Accused shall be decided on merits, the learned Judge followed the prescribed pursuit.

Another decision on which Mr.Jha has placed reliance being in the case of ***R.R.Parekh Vs.High Court of Gujarat &***

¹ (1994) 2 SCC 8

Anr.², as regards the observations made in respect of dishonest exercise of judicial power and, in particular, paragraph 16 of the law report, are also not of any succor to Mr.Jha, as it is a trite position of law that charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision, whether on law or on fact. Ultimately it is not the correctness of the verdict, but the conduct of the officer which is in question and in the present case, I do not find any legal infirmity in the course adopted by the learned Judge, while releasing Jaykumar Gore on bail, on an application filed under Section 439, by applying the parameters prescribed thereunder and mere rejection of an application on an earlier occasion, seeking protection from arrest under Section 438 of Cr.P.C., could not have precluded the learned Judge from deciding the application presented before him on merits, in the wake of the directions from the Hon'ble Supreme Court.

Despite being the settled position of law that the subsequent bail application should normally be placed before the same Judge, who has refused the bail at the first instance, the aforesaid legal premise is not applicable to the present case, since it was on an application for transfer, the matter was entrusted to the another Judge, who ultimately passed the order and the District Judge had exercised the power under Section 408 of the Cr.P.C. and I am not called upon to determine the legality of the order dated 03/08/2022, permitting the matter in connection with the subject C.R. to be transferred to the Additional Sessions Judge, Satara from the Additional Sessions Judge, Vaduj, who had earlier decided the anticipatory bail application.

² (2016) 14 SCC 1

In any case, the subsequent application cannot be termed as successive application for two counts; the first being that it was an application under Section 439 of the Code and secondly on the ground that upon the accused having been surrendered, he moved an application for his release on bail under Section 439, which opportunity was not availed by him earlier.

In any case, Mr.Jha has not questioned the correctness and legality of the impugned order passed by the learned Judge, releasing Respondent No.2 on bail on it's merits and when I have perused the orders, i.e. interim order dated 06/08/2022 and the subsequent order dated 12/08/2022, confirming the interim order, I do not find any legal infirmity in releasing the Applicant on bail, once the investigation is complete and the charge-sheet being filed.

In the wake of the above, the Appeals do not deserve any consideration and the same are dismissed.

(SMT. BHARATI DANGRE, J.)