

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1027 OF 2023

Vicky @ Saurabh Dnyaneshwar Kute ...Appellant

vs.

State of Maharashtra and Anr. ...Respondents

Mr.Satyavrat Joshi h/f Mr.Samay Pawar-Advocate for Appellant.
Mr.S.R.Agarkar - APP for Respondent No.1 - State.
Ms.Apurva Thipsay - Appointed Advocate for Respondent No.2.
Mr.Atul Jadhav-PSI-Wakad Police Station-Pimpri Chinchwad.

CORAM : S. M. MODAK, J.

DATE : 13th DECEMBER 2023

P. C. :-

1. Heard learned Advocate Shri.Joshi for the Appellant-Accused, learned APP for Respondent No.1 - State and learned Advocate Ms.Apurva Thipsay appointed by this Court to espouse the cause of Respondent No.2 / First-Informant.

2. The anticipatory bail application filed by this Appellant came to be rejected by the Court of Additional Sessions Judge - Pune on 7th July, 2023.

3. Predominantly, there are two objections taken to allow this Appeal. They are :-

(a) There is bar to grant of anticipatory bail and the allegations in the FIR and the statements to justify the invocation of Scheduled Castes and the

Scheduled Tribes (Prevention of Atrocities) Act, 1989 [“SC & ST Act”] and as such, the anticipatory bail cannot be allowed to this Appellant. Detailed scrutiny of the materials cannot be gone at this stage.

And

- (b) The presence of this Appellant is spelt out from the Prosecution papers and he has shared the intention along with his brother who is the assailant. Hence, custodial interrogation is required.

4. To buttress her submission, learned Advocate Ms.Thipsay relied upon the following judgments :-

- (a) PrathviRaj Chauhan v/s. Union of India¹
- (b) Vilas Pandurang Pawar v/s. State of Maharashtra²
- (c) Sumitha Pradeep v/s. Arun Kumar³

5. Mr.Joshi, learned Advocate for the Appellant made the following submissions :-

- (a) The incident took place on 28th April, 2023 at about 9.30 p.m., near the house of the Accused No.1 - Hrithik Kutte and the FIR is filed by one Chirag Bhalerao who is the brother of the injured - Mihir Bhalerao. So, admittedly he is not the eye witness. Whatever information was given by him to the Police, it is on the basis of information shared with him by the injured - Mihir. If it is so, why the First-Informant has not stated in the FIR about reference of caste of the injured.

¹ (2020) 4 SCC 727

² (2012) 8 SCC 795

³ 2022 SCC OnLine SC 1529

- (b) Reference of caste is very important prior to invocation of the provisions of SC & ST Act.
- (c) There are two statements of the injured - Mihir Bhalerao. One is dated 4th May, 2023 (Page No.117) and another is dated 5th May, 2023 (Page No.122). According to Mr.Joshi, in the first statement dated 4th May, 2023, there are allegations of abusing the injured - Mihir by the Accused - Hrithik by lowering his caste. However, there is no reference of the caste. Such reference find place in the supplementary statement dated 5th May, 2023. The injured - Mihir has stated that the Accused - Hrithik is aware about the caste of the injured as Hindu-Mahar.
- (d) There is a statement of eye-witness Bhanudas Nakhate (Page No.126). According to Mr.Joshi, there is no reason for the Police not to record his statement immediately after the registration of the offence on 30th April, 2023. In the said statement, the witness - Bhanudas has said about giving of abuses by treating the caste of the injured on the lower side. He has not stated that the Accused - Hrithik has referred about the caste of the injured.
- (e) There is no allegation that the present Appellant was either possessing weapon or using it or some overt act being played by him.

6. Whereas, learned APP and learned Advocate Ms.Thipsay invited my attention to the following materials :-

- (a) There is no delay in lodging the FIR as the incident took place on 28th April, 2023 at 9.30 p.m. Whereas,

the FIR is lodged on 30th April, 2023.

- (b) There is a certificate dated 29th April, 2023 issued by the Bharti Hospital (Page No.54). It certifies that Mihir Pramod Bhalerao is in semi-conscious state and he does not respond to verbal commands.
- (c) There is further certificate dated 30th April, 2023 (Page No.59) which mentions that the patient is not in a condition to give statement at present.
- (d) The injury certificate issued by the said Hospital on 9th June, 2023 (Page No.162) wherein there are injuries on frontal area, forehead and CT scan of brain was recommended.

7. It is for these reasons, it is submitted that the First-Informant has lodged the FIR on the basis of whatever information was passed on him by the injured and that is why, the non reference of the "caste of the injured though abused by the Appellant" in FIR is not fatal.

8. In the statement given by the injured on 4th May, 2023, there is a reference of allegation of lowering down the caste of the injured by the co-accused and what is stated in his supplementary statement on Page No.122 is nothing but reiteration by the injured about knowledge about his caste by the Accused - Hrithik.

Consideration

9. It is true that there are two incidents which have taken place on 28th April, 2023. One : in the parking of one Nakhate

Complex at Rahatani - Pune at about 9.00 p.m., wherein some of the boys entered the parking space. Hrithik was amongst them. Some quarrel was going on. The injured - Mihir and the witness Bhanudas entered the parking for separating the quarrel. This is the first occasion wherein the Accused - Hrithik abused the injured - Mihir Bhalerao on account of caste. The incident ends there. Second incident took place at 9.30 p.m., near the house of Hrithik wherein the witness Bhanudas and the injured - Mihir went and on that occasion, Hrithik was accompanied by his brother, present Appellant - Vicky and other 5 to 6 persons. At that juncture, Hrithik and present Appellant questioned the injured why he had come there and again abused by treating his caste on lower side and at that time, Accused - Hrithik assaulted the injured - Mihir with the help of iron sickle on his head.

Invocation of SC & ST Act

10. It is a matter of record that the injured was admitted in Bharti Hospital and there are certificates on Page Nos.56 and 59 which refers about the condition of the injured to give statement. It is true that on this background, his statement was recorded firstly on 4th May, 2023. It is no doubt true that either on 4th May, 2023 by the injured - Mihir or by the First-Informant Chirag in the FIR dated 30th April, 2023, there is only

reference that the main Accused – Hrithik considered the caste of the injured as on lower side. So, admittedly on 4th May, 2023, the injured – Mihir has not stated that main Accused referred about his caste. It is for the first time, he has said in his supplementary statement dated 5th May, 2023.

11. It is true that at the time of deciding bail application and more particularly anticipatory bail application, the appreciation of materials that is to say, whether one corroborates with another material cannot be gone into by the Court. Ultimately, the Court has to consider the materials as it is. Even if we consider the materials as it is, it is clear that on first occasion, after the injured – Mihir was in a position to give statement on 4th May, 2023, has not said that the main Accused has referred his caste.

12. No doubt, it is true that in the first two judgments relied upon by the learned Advocate Ms.Thipsay, the Hon'ble Supreme Court has dealt with the tenability of the Application under Section 438 of the Code of Criminal Procedure, 1973 ["Cr.P.C."] in an offence under the provisions of SC & ST Act. However, it is also true that it is observed that Court has to take a prima facie view of the matter. It mean to say that on taking prima facie view without appreciating the materials, if the Court finds that the provisions of SC & ST Act are not

invoked on earlier occasion, but on subsequent occasion or if the Court finds that they have been invoked without materials, the Court can certainly consider the request for anticipatory bail. It is true that in the judgment of ***Sumitha Pradeep v/s. Arun Kumar*** (supra), the Hon'ble Supreme Court has dealt with the issue of custodial interrogation in an offence under SC & ST Act. The issue of custodial interrogation will come only if the Court finds that the provisions of SC & ST Act are wrongly invoked.

13. In this case, I feel that the bar under Section 18 of SC & ST Act will not be applicable. When the injured gave his supplementary statement on 5th May, 2023, what he has said is the main Accused was aware about the caste of the injured. Nowhere, he has said that the main Accused abused him by referring his caste. In number of judgments, this Court as well as Hon'ble Supreme Court has observed that reference of caste is required if abuse is one of the ingredients of SC & ST Act. It is absent. I do not think that the observations made in above three judgments will be helpful to the Prosecution.

Custodial Interrogation

14. Now, coming to the custodial interrogation of this Appellant. When I have perused the materials, what I find is that his presence is suggested in the second incident though

not in the first incident. Even in second incident, there is a reference that he was present. There is no reference of any overt act or possessing a weapon. It is also true that in the first information given on 30th April, 2023, reference of name of the present Appellant is not there.

15. For these reasons, I feel that case for anticipatory bail is made out. I have perused the order passed by the trial Court. The trial Court has not considered all these aspects. So, the order needs to be set aside. Hence, order :-

O R D E R

- (a) Appeal is allowed.
- (b) Order dated 7th July, 2023 passed by the Court of Additional Sessions Judge – Pune is set aside.
- (c) In case of an arrest in connection with C.R. No. 424 of 2023 registered with Wakad Police Station-Pune, the Appellant - Vicky @ Saurabh Dnyaneshwar Kute be released on bail on furnishing personal bond and surety bond of Rs.25,000/- subject to following conditions :-
 - (i) Appellant not to enter the limits of Pimpri-Chinchwad Municipal Corporation for one year.
 - (ii) Appellant to furnish his alternate place of residence to the Investigating Officer and to the trial Court prior to furnishing bail and to inform the change, if any.
 - (iii) Appellant not to threaten the Prosecution witnesses or to allure them in any manner.
 - (iv) Above are *prima facie* observations and learned trial Court need not be influenced by them.

15. In view of the above, Appeal is disposed of.

16. Let learned Appointed Advocate Ms.Apurva Thipsay for Respondent No.2-First Informant be paid fees as per the Rules.

[S. M. MODAK, J.]