

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.429/2023

1. Pavan @ Shrikant Gajanan Barabde
Aged 26 years, Occ. Agriculturist

2, Mayur Arunrao Barabde
Aged 27 years, Occ. Agriculturist
R/o Kumbhargaon,
Tq. Anjangaon Surji,
Distt. Amravati.

Appellants.

Versus

1. State of Maharashtra, through
Police Station officer,
Police Station, Rahimapur,
Tah. Anjangaon Surji, Distt
Amravati.

2. Omprakash Najukrao Dhande
Aged 26 years,
R/o Kumbhargaon,
Tah. Anjangaon Surji,
Dist. Amravati.

Respondents

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Mr. J.Y. Ghurde, Advocate for appellants.
Mr. S.M. Ghodeswar, APP for respondent/State.
Mr. Ashutosh M. Choudhari, Advocate for respondent no.2.

ORAL JUDGMENT

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10/08/2023.

1. Heard Mr. Ghurde, learned counsel for the appellants, Mr. S.M.Ghodeswar, learned Additional Public Prosecutor respondent no.1/State and Ms. Ashutosh M. Choudhari, learned counsel for respondent no.2.

2. **Admit.**

3. Present appeal is preferred against the order passed by the Special Court under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, ("Act of 1989" for short) by which, the Special Court has rejected the application for anticipatory bail bearing (Criminal Bail Application) No.289/2023 on 16th June, 2023 by the appellants.

4. The appellants are apprehending arrest at the hands of the police, as crime is registered against them for offences under Sections 143, 294, 323, 506 of Indian Penal Code read with Sections 3(i)(r), 3(i)(s) and 3(2) (va) of the Act of 1989 registered at Police Station, Rahimapur, Tahsil Anjangaon Surji, District Amravati. As per the contention of the appellants, crime is registered against them on the basis of report lodged by Omprakash Dhande on an allegation that the informant along with his friend went to Chandrabhaga Mata Temple at about 8.00 p.m. to watch the auction process of agriculture fields of various trusts. During the auction process, there was altercation of words took place between Ashok Barabde and Nilesh Bhonde and at that time, five persons were driven out of the other persons, who were present at that hall. It is alleged that out of said five persons, present appellants Pawan Barabde and Mayur Barabde abused them on their caste and told to leave the hall of temple. On the basis of such allegation, crime was registered against the present appellants and, therefore, the appellants are having apprehension of arrest at the hands of the police.

5. As per the contention of the present appellants, no such incident had taken place regarding abuses on their caste. Merely because, they are driven out from the said hall, they have implicated present appellants with the

alleged offences. In fact, from the recitals of the FIR no such offence under the provisions of the Act of 1989 is made out. Therefore, there is no bar under Section 18 of the Act of 1989. The learned Trial Court has not considered the same and erroneously rejected the application of the appellants. As far as the custodial interrogation of the present appellants is concerned, not required, as investigation is completed and charge-sheet is likely to be filed in the Court. Considering the same, they may be released on bail in the event of their arrest.

6. Said application is strongly opposed by the learned APP appearing for the State on the ground that there is prima facie material against the present appellants. The appellants insulted and humiliated the informant within public view and therefore, offence under the provisions of the Act of 1989 is made out and there is bar under Sections 18 and 18A of the Act of 1989. Therefore, application for grant of anticipatory bail deserves to be rejected.

7. Learned Counsel appointed for respondent no.2 reiterated the same contention and submitted that prima facie material is in the nature of statements, which shows that the informant and the appellants were present at the place of incident and it further discloses that present appellants uttered abuses, which insults and humiliates the informant and therefore, bar under Section 18 of the Act of 1989 is attracted.

8. Heard Mr. Ghurde, learned Counsel for the appellants. He submitted that as far as bar under Section 18 of the Act of 1989 is concerned, there should be prima facie allegation reflected from the recitals of the FIR. If the recitals of FIR are taken into consideration, mere referring the informant on their caste is not sufficient to attract the provisions of the Act of 1989. No

offence is made out against the present appellants. Their custodial interrogation is not required, as investigation is practically completed. The bar under Section 18 or 18A of the Act of 1989 is not attracted. In support of his contention, he placed reliance on the judgment of a coordinate bench in ***Criminal Appeal No.1258/2022 (Jagdish Sajjankumar Banka Vs.State of Maharashtra and another) with Criminal Appeal No. 1259/2022 (Satish Sajjankumar Banka Vs. State of Maharashtra and another) decided on 10th March, 2023.*** He further placed reliance on the judgment in the case of ***Kedarsingh Dharma Patil and another Vs. State of Maharashtra and another***, reported in ***2019 (4) Mh.L.J. (Cri) 361***, and submitted that the prima facie case is to be made out to show that accused is not a member of Scheduled Castes and Scheduled Tribes or alleged humiliation by way of intentionally insult or intimidation was committed in a place within public view. Absolutely there is no averment in FIR to that effect or whisper that the appellants belong to higher caste or at least they are not members of Scheduled Castes or Scheduled Tribes and absence of same will have an serious impact as to allegations to constitute offence under the Act of 1989. Therefore, statutory bar under Section 18 of Act of 1989 is not applicable to facts and circumstances of case.

9. Per contra, learned APP has vehemently submitted that the recitals of the FIR referring the caste of the present informant within public view on his caste is sufficient to attract the provisions of the Act of 1989. It is submitted that prima facie case is made out against the present appellants and, therefore, bar under Section 18 of the Act of 1989 is attracted. He prays for rejection of the appeal.

10. Having heard learned counsel and learned APP appearing for the parties and on perusal of recitals of the FIR, it reveals that in Chandrabhaga Mata Temple wherein the process of auction of agriculture field of various

trusts was in progress. At the relevant time, there was some scuffle in between the two groups and the informant and others persons are asked by the appellants to leave the hall of temple. It is alleged that at the relevant time, present applicants were abused them in filthy language on their caste. On perusal of the recitals of the FIR, it shows that both appellants were hurled abuses on the caste of the informant and asked him to leave the said premises. During investigation, the Investigating Officer recorded statements of the witnesses. It reveals from the statement that as the auction process was going on, two police constables also deputed on duty and their statements were recorded during investigation. From their statements, it reveals that such incident took place. The Police officers have pointed that the informant and the appellants were remained present and there was some incident of abuses against each other. But, as far as allegations regarding abuses on the caste is not supported by them.

11. It is well settled that merely because the informant or witnesses are referred by their castes is not sufficient to attract the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. ***In the case of Vilas Pandurang Pawar and another Vs. State of Maharashtra reported in 2012 (8) SCC 795***, it was observed that Section 18 of the Act of 1989 creates bar for invoking the application under Section 438 of the Code of Criminal Procedure. However, a duty is cast upon the Court to verify the averments in the complaint and to find out whether an offence under Sections 3(i) of the Act of 1989 has been prima facie made. In the case of **Sumitha Pradeep Vs. Arun Kumar C.K. and another**, reported in **2022 SCC Online 1529**, the Hon'ble Apex Court while dealing with cancellation of anticipatory bail granted by High Court in a case involving offence under the Protection of Children from Sexual Offences Act, 2012. The Apex court further

observed that in many anticipatory bail matters, it is noticed that one common argument being canvassed that, no custodial interrogation is required and therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that, if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered alongwith other grounds while dealing with with anticipatory bail application.

12. As far as the present appeal is concerned, admittedly, there is no allegation that there was any assaults on the person of the informant by the present appellants. Only allegation against the present appellants is that they have abused the informant and used filthy language. It is further alleged that they are referred by their castes and whether the custodial interrogation is required to be considered from the allegation made in the FIR. Admittedly, in the present case, now investigation is completed and the Investigating Officer is likely to file charge-sheet. The custodial interrogation is admittedly not required, as the statements of witnesses are already recorded and the investigation part is already completed by the Investigating Officer.

13. As far as bar under Section 18 or 18-A of the Act of 1989 is concerned, in the case of *Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra and another* reported in *(2018) 6 SCC 454*, the Hon'ble Apex Court had considered the question whether there is an absolute bar to grant of anticipatory bail under the SC/ST Act. The Hon'ble Apex Court has referred to several decisions including the decisions in the case of *Vilas Pandurang Pawar (supra) and Shakuntala Devi Vs Baljinder Singh* reported in *(2014) 15 SCC 521* and observed that there can be no dispute with the proposition that mere unilateral allegation is clearly motivated and false, cannot be treated as enough to deprive a person of his liberty without an independent scrutiny.

14. Thus, exclusion of provision for anticipatory bail cannot possibly, by any reasonable interpretation, be treated as applicable when no case is made out or allegations are patently false or motivated. If this interpretation is taken into consideration in the present case also there is no allegation that the present appellants abused the informant on his caste. Mere referring caste is not sufficient to attract the provisions of the Act of 1989. There must be an intention and intimidation with intent to humiliate member of Scheduled Caste and Scheduled Tribes in a place within public view. It must be shown prima facie that accused who is a member of higher caste and he is by way of intentionally insult or intimidation was committed in a place within public view. Absolutely there is no averment in FIR to that effect or whisper that appellants belong to higher caste or at least they are not members of Scheduled Caste and Scheduled Tribes. Absence of same will entitle the present appellant to be released on anticipatory bail.

15. In view of that, appeal deserves to be allowed. Accordingly, I proceed to pass the following order:-

ORDER

i. The appeal is allowed.

ii. The appellants (1) Pavan @ Shrikant Gajanan Barabde (2) Mayur Arunrao Barabde be released on bail on their execution PR bond of Rs. 25,000/- with one solvent surety each in the like amount in the event of their arrest in Crime No. 104/2023 for offences under Sections 143, 294, 323, 506 of Indian Penal Code read with Sections 3(i)(r), 3(i)(s) and 3(2) (va) of the Act of 1989 registered at Police Station, Rahimapur, Tahsil Anjangaon Surji, District Amravati.

- iii. The appellants shall attend the police Station, Rahimapur as and when required for the investigation purpose and shall cooperate with the investigating agency.
- iv. The appellants shall furnish their mobile/phone numbers, along with their addresses with address proof.
- v. The appellants shall not induce, threaten or pressurize any witnesses, who are connected with the alleged crime.
- vi. Fees of the appointed counsel be quantified as per Rules.

(URMILA JOSHI-PHALKE, J.)

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