



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

958 CRIMINAL APPEAL NO. 575 OF 2023

Gajanan S/o Namdev JogdandAppellant

VERSUS

The State of Maharashtra & anotherRespondents

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Mr. M. P. Tripathi, Advocate for Appellant.

Mr. S. B. Jadhav, APP for the State.

Mr. S. S. Nade, Advocate for Respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 12th DECEMBER, 2024.

PER COURT :

1. Appellant apprehends arrest in connection with Crime No.192/2023, registered with Sailu Police Station, Dist. Parbhani, for offences punishable under Sections 306, 504 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Since learned Sessions Court has rejected the application for anticipatory bail, present appeal is filed.

2. First Information Report came to be lodged on 05.06.2023 by son of the deceased who committed suicide on 25.05.2023. The report indicates that the deceased was working in

the agricultural field belonging to the appellant. There is admission that informant came to know from his cousin Ajay that an incident had occurred on 24.05.2023 at about 10.00 am in which the appellant had abused the deceased over his caste. On the next day, it was found that the deceased committed suicide in the agricultural field belonging to the appellant. It is alleged that due to insult of the deceased over his caste, he was left to commit suicide.

3. Learned counsel for appellant submits that there is delay in lodging First Information Report so also the informant has not witnessed anything as alleged in the report. It is his contention that even if for the sake of argument it is accepted that the deceased was abused over caste, since such incident has occurred in the house and not in the public view, it does not become offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. He also argued that for the whole day thereafter deceased had worked in the field but did not complain about the same to any one. He, therefore, submits that there is absolutely no evidence to connect the present appellant with the crime and since investigation is over, custodial interrogation of the appellant is not necessary.

4. Learned APP and learned counsel for the informant opposed grant of bail by citing provisions of Section 18 of the Act. Learned counsel for informant submits that from the photographs it can be seen that this cannot be a case of suicide but it is a case of murder. He alleges that the Investigating Officer has not conducted proper investigation into the crime and according to him, on the basis of statement of witness, involvement of appellant is found in the serious crime hence, appeal deserve to be rejected.

5. No doubt, Section 18 of the Act creates an embargo from entertaining application for anticipatory bail provided that there is prima facie material on record to indicate commission of crime under provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act by the appellant. In the instant case, First Information Report has been lodged on 05.06.2023 though the incident has occurred on 25.05.2023. Though it is sought to be argued on behalf of the informant now that the informant had been to the police station for reporting the incident but his report was not accepted, there is no material on record to indicate so neither First Information Report claims that he attempted to lodge report earlier. Apart from this, High police officers were also called upon to submit report

before this Court to the effect as to whether the informant had been to the police station at any time before 05.06.2023. The report indicates that he did not go to the police station as now claimed.

6. As far as statement of Ajay is concerned, he claims that the deceased was insulted over caste in his presence. This Court finds substance in the contention of learned counsel for appellant that in view of judgment in case of Hitesh Varma vs. State of Uttarakhand, **AIR 2020 SC 5584**, unless incident has occurred in public view, no offence could be said to have been committed.

7. Though photograph is sought to be placed on record before this Court to contend that this is a case of murder and not suicide, however, post mortem notes indicate that the cause of death is by hanging and not by strangulation. It is not open for this Court to accept the contention of learned counsel for the informant to hold that this is not a case of suicide but murder. Similarly, argument about failure on the part of Investigating Officer to carry out investigation properly does not find support from the material placed on record. In any case, such contention cannot be raised and entertained in an appeal for anticipatory bail.

8. Having regard to the aforestated facts, this Court finds substance in the contention of learned counsel for the appellant that offence under Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act does not get attracted against the present appellant and as such the embargo created by Section 18 of the Act has no application to this case. Having regard to the fact that charge sheet is filed after conclusion of investigation, prima facie this case appears to be of suicide. Having regard to the over all circumstances, this is not a case for custodial interrogation of the appellant. Hence, appeal is allowed in terms of the interim order.

(R. M. JOSHI)
Judge

dyb