



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 ANTICIPATORY BAIL APPLICATION NO. 1733 OF 2024

PANDHARI EKNATH MAHANOR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant :

Mr. Yogesh Patil h/f. Mr. Wakale Vijay Shivaji

APP for Respondent/State: Mr. S. K. Shirse

Advocate for Respondent No.2: Mr. R. M. Gaikwad (*Appointed*)

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CORAM : ARUN R. PEDNEKER, J.

DATE : 27th NOVEMBER, 2024

PER COURT:

1] Heard learned counsel for the applicant and the learned APP for the respondent-State.

2] The applicant is apprehending arrest in connection with Crime No.110 of 2024 dated 15.08.2024, registered at Fardapur Police Station, District Aurangabad, for the offences punishable under Sections 75, 351(2) of Bhartiya Nyaya Sanhita, Section 3(1)(w)(i), 3(1)(w)(ii) and Section 3(2)(va) of S.C. and S.T. Act and Section 12 of the POCSO Act.

3] The allegations in the FIR against the applicant is as under:

“मी कॅन मध्ये पाणी भारत असताना पांढरी महानोर मला म्हणाला कि, तुझे कोना सोबत लफडे आहे काय. असे विचारले, तेव्हा मी नाही म्हणाले पुन्हा ते मला म्हणालाकी, तू दिसायला चांगली आहेस तू माझ्या सोबत राहतेस का तुला मी सांभाळतो तेव्हा मी घाबरून माझ्या नामे बहीण

रजिया हिंस आवाज दिला तेव्हा रजिया हि माझ्याकडे आली तेव्हा मी तिला पंढरी यास तुम्हाला असे बोलणे शोभते का असे बोलून आम्ही दोघी शेतातून घरी पायी निघाले असता रस्त्याला तो पाठीमागून आला व आम्हाला म्हणू लागला कि, मी बोललो कोणाला काही सांगू नका नाहीतर मी तुम्हाला जिवंत सोडणार नाही.”

4] It is on these allegations the aforesaid offences are registered against the applicant. The applicant seeks anticipatory bail.

5] Perusal of Section 3(2)(va) of the SC & ST Act, prima facie, would not be applicable for the instant case, in view of the Judgment of the Hon'ble Supreme Court in the case of **Shajan Skaria Vs. State of Kerala and another**, 2024 SCC OnLine SC 2249, more particularly, at paras 59 and 60, which are reproduced as under:

“59. In the aforesaid context, we may refer to and rely upon a three-Judge Bench decision of this Court in Hitesh Verma (supra). The relevant observations are reproduced below:

“13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that Respondent 2 is a member of Scheduled Caste.

17. In another judgment reported as Khuman Singh v. State of M.P. [Khuman Singh v. State of M.P., (2020) 18 SCC 763 : 2019 SCC OnLine SC 1104] , this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under:

“15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to “Khangar” Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.”

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.”

(Emphasis supplied)

60. Thus, the dictum as laid aforesaid is that the offence under Section 3(1)(r) of the Act, 1989 is not established merely on the fact that the complainant is a member Criminal Appeal No. 2622 of 2024 Page 55 of 69 of a Scheduled Caste or a Scheduled Tribe, unless there is an intention to humiliate such a member for the reason that he belongs to such community. ...”

So also, Judgment of this court in the case of **Yogesh Laxman Pandav and others Vs. The State of Maharashtra and another, dated 05.01.2023**, passed in Criminal Appeal No.858 of 2022, more particularly, at para 8 has observed as under:

“8 The prosecution has also invoked Section 3(1)(w)(i) of the Atrocities Act and in order to attract this provision the person should intentionally touch a woman belonging to a Scheduled Caste knowing that she belongs to that caste and such touch is of a sexual nature and is without consent. Here, the reading of entire First Information Report will not give any such picture that any of the appellants had in fact touched the body of the informant with sexual intent. Therefore, that offence is also not attracted. ...”

6] There is no allegation in the concerned FIR that the victim is touched or that the allegations are made on the ground that she belongs to that particular community and the offence is committed only on the ground that the victim was a member of the SC. In view of the same, prima facie, offence under Section 3 of SC & ST Act would

not apply in the instant case. Considering the offence under Section 75 and 351(2) of B.N.S. read with Section 12 of the POCSO Act, the same are punishable up till 3 years. In view of the same, the applicant is granted anticipatory bail on certain conditions.

7] Mr. R. M. Gaikwad, learned counsel who is appointed to represent the cause of respondent no.2 has vehemently opposed this application for grant of bail and has also assisted to this court. His fees be quantified at Rs.10,000/-.

8] In view of the above, the application is allowed in the following terms :

i] In the event the applicant is arrested in connection with Crime No.110 of 2024 dated 15.08.2024, registered at Fardapur Police Station, District Aurangabad, for the offences punishable under Sections 75, 351(2) of Bhartiya Nyaya Sanhita, Section 3(1)(w)(i), 3(1)(w)(ii) and Section 3(2)(va) of S.C. and S.T. Act and Section 12 of the POCSO Act, he shall be released on bail on furnishing PR bond of Rs.15,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

ii] The applicant shall attend the police station as and when required by the Investigating Officer.

iii] The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.

iv] The applicant shall co-operate with the investigation and also in the proceedings before the trial Court.

9] In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

10] It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

11] The application stands disposed of.

[ARUN R. PEDNEKER, J.]

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