



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1674 OF 2023

Bhaskar Raosaheb Masal And Others

....Applicants

VERSUS

The State Of Maharashtra And Others

.....Respondents

.....

Mr. S.E. Shekade, Advocate for Applicants.

Mr. D.B. Bhange, APP for Respondents No. 1 and 2.

Mr. Shaikh Tarek Mobin Shaikh, Advocate for respondent No. 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 06th MARCH, 2024

ORDER :

1. Applicants apprehend arrest in C.R. No. 712 of 2023, registered with Shevgaon Police Station, Dist. Ahmednagar, for offences punishable under sections 354-A, 143, 147, 148, 323, 504, 506 of Indian Penal Code and under sections 3(1)(r), 3(1)(s), 3(2)(va), 3(1)(w)(i), 3(1)(w)(ii), 3(1)(f), 3(1)(g) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 and under sections 7, 8 and 12 of Protection of Children From Sexual Offences Act, 2012.

2. Informant lodged FIR claiming that he belongs to schedule caste. He is cultivating land Gut No. 86 along with his

Bhagyawant Punde

relatives since forefathers. Adjacent land gut No. 87 is owned by applicants No. 1 to 10, who are residing jointly. There is dispute between applicant No. 11 and informant's brother about the place where firewood is to be kept and garbage is to be dumped. On 21.07.2023, applicant No. 11 asked informant's brother to remove garbage and firewood, otherwise he will consume poison. Informant and his brother refused to do so. Applicant No. 11, therefore, got annoyed and abused them in the name of their caste and extended threats to kill informant's family, as informant's family is the only family in village which belongs to schedule caste. Then applicants No. 1 to 10 came there. Applicant No. 5- Ganesh and applicant No. 8- Mahesh slapped informant. When informant and others were proceeding to Bodhegaon police station in the vicinity of Chede Chandgaon, other applicants No. 1, 2, 3, 4, 6 and 9 obstructed their way and gave beatings to informant and his cousin. Then they reached to police station and were directed to go to rural hospital. At rural hospital, informant received a phone call of his 16 years old niece that applicants No. 5 and 8 molested her, pulled her hairs and tore her clothes. Informant therefore lodged report making these allegations.

3. Heard learned advocate for applicants, learned APP for respondent-State and learned advocate for respondent No. 3/informant. Perused the investigation papers.

4. It is the case of applicants that informant has encroached on the Government land Gut No. 86. In the year 2009-10 informant's name was entered in cultivation column of the said land as per order No. 116/2006 dated 26.02.2006 passed by Tahsildar. Fourteen villagers including applicant No. 11 challenged the said mutation entry and the order of Tahsildar by filing appeal before Sub Divisional Officer. By order dated 20.03.2015 Sub Divisional Officer cancelled the order of Tahsildar as order No. 116/2006 could not be traced out in the record. Applicants further contend that for digging a well for water supply of village under Jal Jeevan Mission Scheme, 10 Are land from Gut No. 86 was earmarked, however, informant was not allowing Government officers to measure the land and was extending threats to villagers to implicate them in atrocity cases. Time and again villagers complained in that behalf. Present FIR is therefore lodged out of grudge and applicants are falsely implicated in the present crime.

5. Learned APP by relying on investigation papers submits that there is eye witness to the said incident, who has supported the allegations in the FIR.

6. Learned advocate for informant by relying on affidavit filed by respondent No. 3/informant submits that order passed by Sub Divisional Officer is of the year 2015 and cannot be related to the incident in question. He further submits that in the FIR there are specific allegations that caste of informant was referred and applicants have assaulted the informant. He further submits that there are direct allegations of outraging modesty by applicants No. 5 and 8. Considering the nature of allegations and bar under section 18 of Atrocity Act, applicants are not entitled for anticipatory bail.

7. On perusal of record there appears substance in the contention of applicants that informant was extending threats to villagers to implicate them in atrocity cases. Villagers complained to the authorities about encroachment and threats to implicate in atrocity cases given by informant, by complaints dated 28.03.2023, 23.03.2023, 27.06.2023 and 30.06.2023. It is a matter of record that 14 villagers including applicant No. 11 challenged the mutation entry recording informant's name in the

cultivation column of land Gut No. 86 in the year 2009-10, by filing appeal before Sub Divisional Officer. The appeal came to be allowed by order dated 20.03.2015.

8. In the above backdrop, *prima facie*, applicants contention that out of grudge, malafide they are implicated in the present case deserves to be accepted. From the allegations in the FIR, it is not clear that whether the alleged incident of taking name of caste of informant was in public view. One of the eye witness who has allegedly supported the allegations in the FIR is neighbor of informant, who belongs to same caste of informant. Except this, there is no material on record to support the allegations in the FIR. In these peculiar facts, this Court is of the view that, *prima facie*, offences under Atrocity Act are not attracted to the facts of the present case. Hence, bar under section 18 of Atrocity Act would not apply to the present case.

9. Considering the allegations made in the FIR, nothing is to be recovered from applicants, hence, their pre-trial custodial detention is not necessary. Application is therefore allowed by confirming interim protection order dated 12th October, 2023.

10. Till filing of charge sheet, applicants shall attend the concerned police station as and when called by investigating officer and shall co-operate in the investigation. Applicants shall not tamper the prosecution evidence.

11. It is made clear that observations in this order are *prima facie* and shall not influence the Trial Court while deciding the matter on merits.

[NITIN B. SURYAWANSHI, J.]