



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 CRIMINAL APPEAL NO. 1022 OF 2024

GANGADHAR SHIVRAYA KAMGONDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Bilolikar Upendra Bapurao, Advocate for Appellant
Mr. V. M. Chate, APP for Respondents
Mr. Vinod Dhotre, Advocate for Respondent No.3

CORAM : Y. G. KHOBRAGADE, J.

Dated : 20th December, 2024

PER COURT :-

1. Heard Mr. Bilolikar, the learned counsel for the appellant and Mr. V. M. Chate, the learned APP for Respondent Nos. 1 & 2.
2. By the present Appeal under section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the Appellant is seeking anticipatory bail in Crime No.285 of 2024, registered with Dharmabad Police Station, District Nanded, for the offence punishable under Sections 115(2), 189(2), 190, 191(2), 296, 351(2), 351(3), 352 of Bhartiya Nyaya Sanhita, 2023 and U/Sec. 3(1)(r), 3(1)(s), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
3. On face of record, it appears that Respondent No.3/ informant lodged an FIR on 06.10.2024 and reported the incident

occurred on 3rd October, 2024 at about 6.00 p.m. alleging that when he asked the present appellant accused/husband of Sarpanch about cleaning of culvert which had been choked with rainy season water and the rain water entered in his house. However, the present appellant abused him on his caste. So also, there was scuffle between them.

4. The Investigating Officer filed reply and stated that the incident of abusing on caste was occurred on the road and the investigation is in progress. It is further contended that if the accused is released on bail, there is every possibility that the accused may again commit the same type of offence and may pressurize the witnesses.

5. In the case in hand, after considering the FIR and the statements of witnesses, incident appears about abusing the informant on his caste by saying that he is not Sarpanch of village and the problem should not be narrated to him. Further the complainant alleged that the appellant/accused abused him that he belongs to Koli caste, he require no cleanliness and the said caste persons are staying in culvert. Considering the allegations made in the FIR and the statements of witnesses, to my mind,

further interrogation of the accused is not required, so also, there is no question of recovery of any weapon.

6. No doubt, section 18 of the of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 creates bar on releasing accused on anticipatory bail under section 438 of the Criminal Procedure Code. In Case of **Chikkappa and others Vs. State of Karnataka, 2002 Cri.L.J. 518**, it is held that though section 18 of the Act creates a bar for invoking provisions of Section 438 of the Cr. P.C., still it is open for the higher forum like High Court to see whether prima facie case is made out to sustain the prosecution.

7. The learned APP placed reliance on **Prathvi Raj Chauhan Vs Union of India and others, (2020) 4 Supreme Court Cases 727**, wherein, the Hon'ble Supreme Court held as under:

"The scope of Section 18 of the SC/ST Act, 1989 read with Section 438 CrPC is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence

and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 CrPC, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

8. In case in hand, prima facie it appears that FIR has been lodged against the present appellant out of village political rivalry, on ground cleaning of culvert and abusing on caste. Therefore, considering the nature of the offence, to my view, the Applicant is entitled for anticipatory bail. Accordingly, I proceed to pass the following order:

ORDER

- (i) Criminal Appeal is allowed.
- (ii) In the event of arrest, the Applicant- Gangadhar s/o Shivraya Kamgonde in Crime No.285 of 2024, registered with Dharmabad Police Station, District Nanded, he shall be released on anticipatory bail on furnishing PR bond of Rs.50,000/- with two solvent sureties in like amount.

- (ii) The Applicant shall attend the concerned Police station on each Monday between 1.00 p.m. to 2.00 p.m. and shall cooperate with the Investigating Officer, till filing of the charge-sheet.
- (iii) The Applicants shall not issue any threat to any witnesses including the complainant/informant and shall not tamper with any evidence.

(Y. G. KHOBRAGADE, J.)

JPChavan