

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1065 OF 2023

Raj Sanjaykumar Nanavati

... Appellant

Versus

Manisha Baban Salunke & Anr.

... Respondents

WITH

CRIMINAL APPEAL NO. 1023 OF 2023

Dinanath Manik Katkar

... Appellant

Versus

The State of Maharashtra & Anr.

... Respondents

Mr. D. S. Mhaispurkar a/w Hrishikesh Pawaskar for the Appellant in Appeal No. 1065 of 2023.

Ms. Pooja Agarwal for Appellant in Appeal No. 1023 of 2023 (Through Video Conference)

Ms. Shilpa G. Talhar, APP for Respondent-State.

Mr. Nitin S. Satpute a/w Shobha Buddhiwant & Mr. Deepak Jadhav for Respondent/Complainant.

CORAM : SANDEEP V. MARNE, J.

DATED : 16 JULY 2024.

P.C. :

1) These Appeals are filed under provisions of Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) against the Order dated 2 September 2023 rejecting the pre-arrest bail application of Appellant Dinanath Manik Katkar and Order dated 13 September 2023 rejecting pre-arrest bail application of Appellant Raj Sanjaykumar Nanavati by Additional Sessions Judge, Barshi, in connection with CR. No. 607 of 2023 registered at Barshi Police Station for offences punishable under Sections 354, 354-D, 385, 506, 509 read with Section 34 of the Indian Penal Code, 1860 and Section 12 of Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s) and 3(2)(va) of the SC & ST Act, 1989.

2) I have heard Mr. Mhaispurkar, the learned counsel appearing for Appellant in Criminal Appeal No. 1065 of 2023. He would submit that the F.I.R. lodged by Respondent No. 2 is an outcome of the Complaint filed by the Appellant with the Special Inspector General of Police, Kolhapur with regard to noise pollution caused due to the procession taken out on Annabhau Sathe Jayanti on the relevant date. That the first informant was a part of the said procession and merely because Appellant showed audacity to file complaint in respect of the said procession, he has been falsely implicated in the incident. He would submit that so far as Appellant Raj Sanjaykumar Nanavati is concerned, there is no allegation with regard to caste-based abuses to any person. He would submit that the said Appellant is on interim protection granted by this Court since 25 October 2023. That the Appellant has participated in the conduct of the investigations by repeatedly

remaining present before the concerned police station and that the mobile phone of the Appellant has also been surrendered with the Investigating Officer. That since there is complete co-operation on the part of the Appellant in conduct of investigation coupled with interim protection granted in favour of the Appellant for a substantial period of time. That therefore Appeal deserves to be allowed.

3) Ms. Agarwal the learned counsel appearing for the Appellant in Criminal Appeal No. 1023 of 2023 filed by Dinanath Manik Katkar would submit that the CCTV images produced along with the Appeal would clearly indicate the presence of Appellant during entire evening of 2 August 2023 in his office. That this aspect is confirmed by the investigating officer in the Affidavit in Reply filed in the Appeal. She would submit that the Appellant has been falsely implicated in the case on account of the fact that the he is an RTI Activist and had reported some of the incidents *qua* the concerned senior P.I. and therefore he has been deliberately implicated in a false case. So far as the antecedents against the Appellants are concerned, Ms. Agarwal would submit that in one of the cases, B-Summary report has already been filed which leaves only three other cases falsely registered against the Appellant. That in respect of CR Nos. 148 of 2020 and 359 of 2020 false accusations are raised in respect of police protection granted to him and that the concerned police officers have given statements indicating the falsity of the said accusations. She would accordingly submit that there are no criminal antecedents against the Appellant which need to be taken into consideration for the purpose of deciding the present Appeal. Ms. Agarwal would further submit that after grant of interim protection, Appellant has attended the

police station on 18 occasions and has fully co-operated with the investigations. That the statement of the Appellant has also been recorded. Lastly, Ms. Agarwal would submit that the Appellant is on interim protection granted by this Court on 15 September 2023 which needs to be made absolute.

4) Ms. Talhar the learned APP appearing for Respondent-State would oppose both the Appeals submitting that Appellant Nanavati has indulged in the act of molesting the first informant in addition to video recording the girls and women present in the procession. That the said accused has further demanded amount of Rs. 50,000/- towards extortion by giving threat of making public the recordings done by him. So far as accused Katkar is concerned, Ms. Talhar would submit that the F.I.R. indicates specific caste-based abuses by him. That there are chances of Appellants tampering with the evidence and pressurizing the witnesses if they are granted pre-arrest bail. She would accordingly press for dismissing the appeals.

5) Mr. Satpute, the learned counsel appearing for the Respondent No. 2-Complainant would also oppose both Appeals submitting that FIR indicates specific allegations against the accused as well as specific role ascribed to them. That bar under provisions of Section 18 of the SC & ST Act would be attracted in the present case once specific role in respect of each of the accused is reflected in the FIR. That accused Katkar has hurled abuses with reference to the caste of the complainant and his role is specifically reflected in the FIR. That caste-based abusing has taken place in

public view. Since this is not a case involving lack of *prima facie* material, bar under Section 18 of the Act would apply and anticipatory bail cannot be granted, considering the law laid down by the Apex Court in ***Vilas Pandurang Pawar Versus State of Maharashtra and another***¹. Mr. Satpute would further submit that there are as many as 9 eyewitnesses to the incident. That CCTV footage relied upon by accused Katkar cannot be relied upon for the purpose of deciding pre-arrest bail considering the fact that the CCTV footage shows disconnection of electricity supply intermittently coupled with the fact that the location of office of the accused is hardly at a distance of two minutes from the venue where the crime was committed. That accused Katkar has deliberately created evidence of his presence in the office by taking a false plea of alibi. He would submit that since accused Katkar has serious and numerous antecedents against him, pre-arrest bail cannot be granted to him. So far as accused Nanavati is concerned, Mr. Satpute would submit that there are three specific allegations of inappropriate touching, video recording and extortion alleged against him and therefore pre-arrest bail cannot be granted to him. Mr. Satpute would pray for dismissal of both the Appeals.

6) Having considering the submissions canvassed by the learned counsel appearing for parties, it is seen that there is some delay in lodging the FIR. The incident is shown to have occurred on 2 August 2023 whereas the FIR is lodged on 5 August 2023. Though Mr. Satpute is quick enough to respond that the delay in lodging of FIR is attributable to the conduct of police, who initially showed disinclination to take the complaint of the complainant and it is only after the complainant approached the community

¹ 2012 (8) SCC 795.

persons that the police finally registered the FIR. Be that as it may. There appears to be some delay in lodging of FIR in the present case.

7) Both the accused have ascribed motive for registration of FIR. While accused-Nanavati attributes lodging of FIR to the complaint filed by him with the Special Inspector General of Police, Kolhapur, Bench in respect of noise pollution in the concerned procession, accused Katkar has alleged that the concerned Senior Police Inspector had grudge at least him on account of his role as RTI activist.

8) Both the accused are on interim protection granted by this Court for considerable period of time and there is no dispute to the position that both the accused have co-operated with conduct of investigations after grant of interim protection by this Court. Mr. Mhaispurkar has submitted that accused-Nanavati has surrendered his mobile phone. Ms. Agarwal has submitted that accused-Katkar attended the police station on as many as 18 occasions. Ideally the charge sheet should have been filed considering the passage of time from the date of registration of FIR coupled with the fact that both the accused have repeatedly visited the police station for co-operating with the investigation. Why charge sheet is still not filed is something which is incomprehensible considering the facts of the present case.

9) So far as the antecedents of the accused-Katkar are concerned it appears that in respect of CR No. 255 of 2020, B-Summary report has already been submitted. In respect of other three CRs, according to Ms. Agarwal, statements of concerned police officers are recorded in respect

of two CRs demonstrating falsity in the accusations. In my view therefore the antecedents reflected in the reply of the Investigating Officer alone cannot be a reason for denial of pre-arrest bail to accused-Katkar, in the facts of the present case.

10) So far as bar under Section 18 of SC & ST Act highlighted by Mr. Satpute is concerned, it is well settled law that there is no absolute bar under Section 18 and 18A of the Act for grant of anticipatory bail in respect of offences of concerned SC & ST Act. In an appropriate case where *prima facie* case is not made out, the Court is vested with necessary jurisdiction to grant pre-arrest bail to the accused. Reference in this regard can be made to the judgment of the Apex Court in ***Dr. Subhash Kashinath Mahajan Versus The State of Maharashtra and Anr.***² and ***Prathvi Raj Chauhan Versus Union of India and Ors.***³ Even in the judgment of ***Vilas Pandurang Pawar*** relied upon by Mr. Satpute, the Apex Court has reiterated the position by observing as under:

“10. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code 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 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

² (2018) 6 SCC 454.

³ Writ Petition No (C) No. 1015-16 of 2018 decided on 10 February 2020.

11) The allegation of demand of Rs. 50,000/- from unknown girls dancing in procession also *prima facie* appears unbelievable. Plea of accused-Katkar of alibi also needs to be examined during the course of trial.

12) Considering the nature of allegations in the FIR, delay in lodging the same, so also the fact that both the Appellants are on interim protection granted by this Court coupled with their co-operation during the course of investigation, in my view, the interim protection granted in favour of both the Appellants by this Court deserves to be made absolute.

13) I accordingly proceed to pass the following Order:

(a) Orders dated 2 September 2023 in ABA No. 698/2023 and 13 September 2023 in ABA No.677/2023 passed by the Additional Sessions Judge, Barshi are set aside.

(b) In the event of arrest of Appellants in connection with CR. No. 607 of 2023 registered with Barshi Police Station for offences punishable under Sections 354, 354-D, 385, 506, 509 read with Section 34 of the Indian Penal Code, 1860 and Section 12 of Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(s) and 3(2)(va) of the SC & ST Act, 1989, they shall be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two solvent sureties in the like amount.

- (c) Appellants shall remain present before the concerned Investigating Officer and shall cooperate with completion of investigations.
 - (d) Appellants shall attend Trial Court regularly unless exempted from personal appearance.
 - (e) Appellant shall not pressurize the first informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.
- 14) With the above directions both the Appeals are allowed and disposed of.

[SANDEEP V. MARNE, J.]