



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1220 OF 2023

HARIOM MUNNALAL SOLANKI ..APPELLANT
VS.
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Mr. S.R. Samel i/b Adv. Rajeev Sawant and Associates for
the Appellant.

Mr. Jaymangal Dhanraj for Respondent No.2.

Ms. S.D. Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 22, 2024

ORAL JUDGMENT:

1. Heard learned counsel for the appellant, learned counsel for respondent No.2 and learned APP for the State.
2. This appeal challenges the order dated 18/10/2023 passed by the Sessions Court, Kalyan. The appellant prays that he be enlarged on bail in the event of his arrest in connection with First Information Report (FIR) No. 127 of 2023 registered with Bazarpeth Police Station, Kalyan for the offences punishable under Sections 506 and 34 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1)(u),

3(1)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter referred to as "Atrocities Act" for short).

3. The appellant was working as a General Manager. The appellant was a superior officer of respondent No.2. The appellant is accused No.2 in respect of the aforesaid offence. Accused No.1 was an Assistant General Manager. In brief, it is alleged by respondent No.2 that on account of the complaint under the Atrocities Act filed against some other officer/s of Bharat Sanchar Nigam Limited (BSNL) at Goa, the accused who were his superior officers at Kalyan were pressurising him to withdraw the complaint at Goa. As respondent No.2 was not willing to withdraw the complaint, the accused started harassing respondent No.2 by transferring him to different places and even making him work under his junior. They were creating hurdles in his work.

4. There are 2 instances cited in FIR by the respondent No.2 alleging abuse by the accused in the name of caste. The first instance is on 28/06/2022 and the second is on

04/08/2022. The present appellant is concerned with the second incident. It is alleged that accused No.1 Pradeep Ramanbhai Patel took respondent No.2 into the cabin of the appellant when the respondent No.2 was being forced to withdraw the complaint. He was abused by the accused in the name of the caste. So far as the accused No.1 Pradeep Patel is concerned, this Court by order dated 26/10/2023 in Criminal Appeal No. 1025 of 2023 has allowed the appeal thereby granting anticipatory bail to the accused No.1. Learned counsel for the appellant submitted that even on the ground of parity with the co-accused Pradeep Patel the appellant can be granted anticipatory bail. For convenience, the relevant portion of the order dated 26/10/2024 passed by this Court in respect of the co-accused Pradeep Patel is reproduced and the same reads thus:

"3. The Complainant, Mr.Suresh Bhosle, working as Junior Telecom Officer, Department of Telecommunication, lodged a complaint on 01/06/2023 with Bazarpet Police Station, Thane city against the two officers of BSNL, Kalyan; being Mr.Pradeep Patel, Deputy General Manager and Mr.Hari Om Solanki, General Manager, complaining about their humiliating and intimidating behaviour,

knowing well that he belongs to Scheduled Caste, by pressurizing him to withdraw the complaint filed by him against the superior officers of BSNL in Porvorim Police Station, Goa, Panaji and also with an intent to deprive him of the necessary facilities, so that he shall not be in a position to perform his duties effectively and this would offer them an opportunity to find fault with him as regards his official duties, which would result in adverse action against him, including the action of transfer.

It is the narration of the Complainant that, he is in the service of BSNL, since the year 2000 and during his various postings, he was subjected to mental harassment by his superiors and by misusing the powers, he was transferred from time to time and his adverse reports were prepared and this resulted in a complaint being filed by him on 17/07/2017 against the senior officials, the Chief Engineer and the Superintendent Engineer at Goa and the proceedings are in progress.

Thereafter, in the month of November 2020, when he was transferred to Kalyan, the Appellant, working as Deputy General Manager and Mr. Hari Om Solanki, working as General Manager, though having knowledge that he belongs to Scheduled Caste, questioned him as to why he had filed complaint against the superior officers under atrocities and from time to time pressurised him to withdraw the same. When he did not wriggle out, he was posted to work under his junior Mr. Amit Patil in Electric Wing. Being aggrieved by this act, he filed a representation with the Chief Managing Director, Delhi. Being displeased on this issue, punitively he was placed as Junior Telecom Officer in the month of May, 2021 and on 07/06/2022, he was assigned the work of Special Exclusive BBC for area under Divisional Engineer, Kalyan and this required him to undertake travel in Shahapur, Murbad, Kalyan. Although he was expected to carry out his official duties faithfully, he was not provided the required facilities like car, cabin, computer, printer etc., is the grievance highlighted in the complaint.

4. In specific, the complaint refers to two incidents; the first is alleged to have occurred on 28/06/2022, when the Appellant called the Complainant in his cabin to report on the progress of the work, but when he complained that the necessary and basic facilities like the vehicle was not made available to him, as per the Complainant, he was told that he has to work in the existing conditions, which are provided, but nonetheless he must give the necessary output. Once again he was threatened that the complaint, which was filed by him at Goa, should be withdrawn or else, he will have to repent. It is also alleged by him that abusive words were uttered against the father of the nation and what was indicated in insulting manner was, that the community is given long rope, but they will never improve and move ahead.

Another incident dated 04/08/2022 also find mention in the complaint, when it is alleged that the Appellant once again called the Complainant in his chamber in presence of the General Manager, Mr.Hari Om Solanki and at that time, even he uttered somehow similar words, by referring to Dr.Babasaheb Ambedkar, a person held in high esteem by the Scheduled Caste community and the utterances, according to the Complainant, were intended to humiliate, insult and intimidate him as well as high figure on the ground of caste.

5. The above referred accusations resulted in invoking Sections 3(1)(r), 3(1)(s), 3(1)(u) and 3(1)(v) of the Act of 1989 alongwith Section 506 read with Section 34 of the IPC.

The occurrence of the events mentioned in the complaint are for a period commencing from 07/06/2022 to 01/06/2023.

6. The learned counsel for the Appellant, at the outset, would submit that Respondent No.2 is persistent in his habit of lodging false complaints, by

invoking the provisions of the special Act of 1989 and at the outset, he would submit that as far as the complaint filed at Goa is concerned, the Division Bench of the High Court at Goa, on 21/08/2023, has quashed the same (F.I.R.No.98 of 2017), when it clearly recorded as under :-

“37.The First Informant complained about alleged harassment against his reporting officers. If such complaints are entertained, the reporting officers will not be able to give the correct opinion of the employee working under him or her, as the case may be, and more specifically, belonging to the Scheduled Caste or Scheduled Tribe community. The reporting officers are duty-bound to give their genuine and correct opinion while reporting about the employees working under them for the specified period. Thus, when a correct opinion is given which is found to be adverse, it cannot be considered as given with an intention to harass the employee belonging to a particular caste.”

It is specifically submitted by the counsel for the Appellant that the present complaint, lodged against the Appellant as well as Mr.Solanki, the General Manager, is nothing but an attempt to vindicate them, as they are his superior officers and it is a regular modus operandi adopted by the Complainant to implicate his superiors, whenever they make grievance. As far as the accusation that he was made to work under Mr.Amit Patil is concerned, it is pointed out to me that by order dated 30/05/2018, the charge of the post of SDE(Elect) on “Look After Arrangement basis” is assigned to the JTO(Elect) and Mr.Amit Patil was chosen as one of these officers and, hence, there is no question of the Complainant being made to work under him and in any case, he has already made a grievance as regards this, to the appropriate forum, by addressing a representation.

It is also the specific submission of the Appellant that his posting at Kalyan is by the Assistant General

Manager, by an office order and so is the case when he was assigned the duty of Exclusive BBC for area under DE KYN by the Assistant General Manager (Admin) and the Appellant has no role to play in such transfer and postings.

It is also specifically submitted that the allegations made against the two officers, including the Appellant were inquired into at departmental level and this covered the atrocity complaint and it was reported that they are not factual.

7. Alongwith the Appeal, the investigation report about the complaint preferred against the Appellant and the General Manager under the signature of the Committee Members, is placed on record and the fact finding report has made the following observations :-

D. Finding/General Observations :

1 Arguments/hot discussions occurred between both parties was confirmed

2 Caste and abusive language used could not be determined as witnesses did not confirm.

3 However, the expressions during investigation was found to be a little sluggish, as the possibility of withdrawal of truth by witnesses could not be ruled out completely, as some were found to be not very open to discuss.

4 His working nature was however accepted as satisfactory by his colleagues and controlling officer.

5 Behaviour and character was found to be satisfactory with other staff.

E. Recommendation :

Shri.S.B.Bhosle is apparently frustrated and isolated may be due to delay in getting promotion

since last 25 years and associated tribulations. Therefore, he may be encouraged & provided with empathy, so as to mitigate the feeling of negligence and humiliation that he carries with him till this day.

8. In order to ascertain whether the offences, which are invoked are made out on reading of the complaint, it is necessary to reproduce the relevant provisions.

"3(1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

3(1)(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

3(1)(u) By words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

3(1)(v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes."

9. As per the complaint on 28/06/2022, the abuses with an intention to insult and humiliate him, since he belongs to a particular caste, were hurled at him by the Appellant, but on 04/08/2022, though he was called in his chamber, the objectionable remarks are alleged to have been uttered by the co-accused.

When asked, whether any statements are recorded to support the version of the Complainant, the learned A.P.P. has placed before me the statements of five witnesses, who were present in the office on the date and when the statements are perused, in

unison, the witnesses have stated that on 28/06/2022, some altercation took place between the Appellant and the Complainant as regards the work and, in particular, it was focused on infrastructure and demand of vehicle by the Complainant. None of the witness has corroborated the version of the Complainant that the casteist words or the insult to the respected and revered person of the community were uttered to insult him or to cause insult the father of the nation.

As far as the incident dated 04/08/2022 is concerned, there is no person, who has overheard or witnessed the said incident. The said statements recorded by the Investigating Officer under Section 161 of the Criminal Procedure Code (for short, "the Cr.P.C.") necessarily will form part of the charge-sheet.

10. In the wake of the above, the offences under Sections 3(1)(r) and 3(1)(s) are, prima facie, not made out, as they contemplate intentional insult or intimidation, with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within "public view".

The concept of "public view" is by now well settled and the Hon'ble Apex Court in the case of Hitesh Verma Vs. State of Uttarakhand & Anr. has drawn a line of distinction in the two terms, "place in public view" and "public view", by offering a clarification, that presence of the members of the public inside the building or enclosed place would render such place a "place in public view" due to presence of members of the public. But in any case, when the insult or humiliation is within the four walls of the building and if the abuses were not heard, by any member of the public, then the ingredient of the offence that the words were uttered in "any place within public view" is not made out.

At this stage, there is no witness to the incidents of 28/06/2022 and 04/08/2022 and, hence, prima

facie, no offence could be said to have been made out under the said provision. Similarly as far as the offences under Sections 3(1)(u) and 3(1)(v) are concerned, it is only the version of the Complainant/Respondent No.2 that the Appellant spoke words, by which he has expressed disrespect towards the person held in high esteem by the members of a particular caste. However, even to prove the ingredients of the said Sections, except the bare words of the Complainant, there is no other material at this stage and in any case, it is open for him to establish the ingredients of Sections 3(1)(u) and 3(1)(v) at the time of trial, by adducing evidence to that effect.

However, at this stage of grant of protection from arrest and for the purpose of custodial interrogation, the Court will have to take into account a prima facie case and where such case is not made out, the Court would always be justified in exercising the power to grant anticipatory bail, despite existence of bar under Sections 18 and 18A of the Act of 1989. The parameters of exercise of the power under Section 438 of the Cr.P.C. and, in particular, as regards the accusations levelled under the Act of 1989 are concerned, the Court is expected to necessarily balance the two interest, i.e. the power is not so used, as to convert the jurisdiction into that under Section 438 of the Cr.P.C., but that it is used sparingly and such orders are made in very exceptional cases, where no prima facie offence is made out, as shown in the F.I.R. and further also that if such orders are not made in those class of cases, the result would inevitably be miscarriage of justice or abuse of process of law.

11. The Apex court in the case of Prathvi Raj Chauhan Vs. Union of India & Ors., has expressed a word of caution in exercise of this power in the following words :-

“Such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a

liberal use of the power to grant pre- arrest bail would defeat the intention of Parliament.”

By applying the aforesaid principle of law, flowing from the authoritative pronouncement, when the complaint filed by Respondent No.2, when read as it is, prima facie does not make out offence under the special statute and can be expressed to have custodial interrogation of the Appellant, as prima facie reading of the FIR does not justify invocation of Sections 3(1)(r), 3(1)(s), 3(1)(u) and 3(1)(v).

Needless to state that the observations made above are, prima facie, in nature and limited to the extent of adjudication of the present Appeal and the learned Judge trying the Appellant for the offences with which he is charged, shall not be influenced by the above observations, in any manner.”

5. Learned counsel for respondent No.2 and learned APP opposed the appeal. It is submitted that there are specific allegations in the complaint against the present appellant that he abused the respondent No.2 in the name of the caste. It is submitted that merely because the witnesses do not say anything about caste-based abuse cannot be a ground to enlarge the appellant on anticipatory bail, as it needs to be kept in mind that the witnesses are subordinate officials of the appellant and therefore, the possibility of they being under pressure cannot be ruled out. Learned counsel for respondent No.2 also relied upon the

investigation report by Circle Liaison Officer (SC/ST) Maharashtra Circle, Mumbai, which observes that witnesses were not forthcoming. I find it pertinent to note that further observation is made in such report that caste and abusive language used could not be determined as witnesses did not confirm this fact. The report has to be read as a whole and not in bits and pieces.

6. Learned counsel further submitted that the appellant is not entitled to bail on the ground of parity alone as the specific role of the appellant is to be dealt with before any decision can be taken in this appeal. Reliance is placed on the decision in Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana (Koli) and Another¹. The relevant observations of Their Lordships in paragraph No.26 reads thus:

“The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to

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the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

7. Learned counsel submitted that the Court cannot proceed on the basis of parity on the simplistic assessment that the role of the appellant is similar to that of the co-accused Pradeep Ramanbhai Patel who has been enlarged on bail as this would not pass muster under law.

8. I have carefully perused the allegations in the FIR. It is the accused No.1 who had taken respondent No.2 in the cabin of the appellant when the allegations are made by the complainant about the abuse in the name of the caste. None of the employees who are cited as witnesses support the version of respondent No.2 that the appellant abused the complainant in the name of caste. The alleged incident happened in the cabin of the appellant in the presence of the co-accused Pradeep Ramanbhai Patel who is also alleged to have abused respondent No.2 in the name of the caste and has been enlarged on bail by this Court. These observations are *prima facie* in nature. Considering the role

of the appellant, the nature of the allegations and the fact that there are no independent witnesses corroborating the version of respondent No.2, I am of the opinion that the observations of this Court in respect of co-accused Pradeep Ramanbhai Patel squarely apply to the present appellant apart from even otherwise entitling the appellant the facility of pre-arrest bail for the reasons aforesated as well. Hence, I do not find any merit in the submission of learned APP and learned counsel for respondent No.2. The appeal, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (a)** The appeal is allowed.
- (b)** The order passed by the Sessions Court, Kalyan dated 18/10/2023 in Anticipatory Bail Application No. 933 of 2023 is quashed and set aside.
- (c)** In the event of arrest in connection with C.R. No. 127 of 2023 registered with Bazarpeth Police Station, Kalyan, Appellant – Hariom Munnalal Solanki shall be released on bail on furnishing P.R. Bond to the extent of Rs. 50,000/- with one or more sureties in the like amount.
- (d)** The appellant shall report to the Investigating Officer as and when called and shall co-operate with the investigation.

(e) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to the Court or any Police Officer and shall not tamper with evidence.

9. The appeal is disposed of in the above terms.

(M. S. KARNIK, J.)