



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPLN) NO.129 OF 2022

Shrikrushna Hanumantrao Dhadwe

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Asegaon District Washim and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. D. Chande, Counsel for the applicant.

Mr. H. D. Dubey, APP for non-applicant No.1/State.

Mr. A. D. Girdekar, Counsel for non-applicant Nos.3 to 7.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 22/10/2024

1. The present application is filed by the applicant under Section 439(2) of the Code of Criminal Procedure for cancellation of anticipatory bail which was granted to the non-applicant Nos.2 to 7 in Misc. Criminal Application No.279/2022 and 264/2022 by the learned Additional Sessions Judge, Link Court, Mangrulpir, Camp at Washim.

2. It is the contention of the applicant that the applicant has lodged the report on 31.08.2022 that he belongs to the Scheduled Caste and Scheduled Tribe. The accused Nos.2 to 7 are belonging to the open caste. The applicant owned and possessed the land of Gut No.336 admeansuring 4 HR which is adjacent to the land of present non-applicant Nos.2 to 4. All the non-applicant Nos.2 to 7 are goons in nature, and they have

their way to enter into the land, but intentionally, they are using the land of the complainant to enter into their fields. On 04.11.2021, the co-accused Nos.8 and 9 have make noise of Cracker near the house of the complainant intentionally. The complainant have requested them for not making the noise, but co-accused Nos.8 and 9 namely Pravin Sakharkar and Amol Sakharkar quarreled with the complainant, and the co-accused Pravin Sakharkar came inside the house of the complainant, and caused hurt to the wife of the complainant and son and also insulted and intimidated him with intent to humiliate by saying "Chambhardya". Thereafter, on 14.11.2021, in the morning, when the complainant had been to his field at 7 O' clock, he saw the non-applicant Nos.2 to 7 who were digging the land of the complainant and were making their way for themselves. Though the complainant restrained them, they caused hurt to the complainant and his family members and also insulted and intimidated by saying "Chambhardya". Thereafter, the complainant i.e. the applicant in the present case approached the Police Station and lodged the report. On the basis of the said report, crime was registered under Sections 323, 452, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989') vide Crime No. 251/2022.

3. After registration of the crime, the non-applicant Nos.2 to 7 approached to the learned Special Court for grant of anticipatory bail. The learned Special Court has granted the bail to them, in the event of arrest, without considering the bar under Section 18 of the Act of 1989. The ground raised by the present applicant is that the learned trial Court has not considered that a *prima facie* crime is attracted and therefore, there is bar under Section 18 of the Act of 1989, and anticipatory bail application is not maintainable. It is further contended that the learned Special Court has ignored the material and granted the anticipatory bail to the present non-applicant Nos.2 to 7 and therefore, the bail granted to the present non-applicant Nos.2 to 7 deserves to be cancelled.

4. Heard learned Counsel Mr. Chande for the applicant. He submitted that in view of bar under Section 18 of the Act of 1989, the learned trial Court ought to have considered that there is a *prima facie* case and therefore, bar is attracted and the application ought to have rejected. But the learned Special Court has not considered the same and granted the bail in spite there is a bar. Thus, learned trial Court has ignored the material which is collected during the investigation and in view of that, the bail granted to the present non-applicant Nos.2 to 7 deserves to be cancelled. In support of his contention he placed reliance on **Arumugam Servai vs. State of Tamil Nadu** reported in **(2011) 6 SCC 405, Manju Devi Vs.**

Onkarjit Singh Ahluwalia @ Omkarjeet Singh and Ors. reported in **AIR 2017 SC 1583** and **Swaran Singh and others Vs. State through Standing Counsel and another** reported in **(2008) 8 SCC 435**.

5. Learned APP supported the case of the applicant and reiterated the contention that the learned trial Court has ignored the material evidence and also ignored the legal provisions that there is a bar under Section 18 of the Act of 1989, therefore application for anticipatory bail is not maintainable.

6. Per contra, learned Counsel for the non-applicant Nos.3 to 7 strongly opposed the application and submitted that mere reference of the caste is not sufficient to attract the provisions of the Atrocities Act. The learned trial Court has considered the same. There are no abuses, only reference of the caste is not sufficient to attract the provisions. In view of that, the bail is granted. The application is devoid of merits and liable to be dismissed.

7. After hearing the learned Counsel for the applicant, learned APP for the State and learned Counsel for the non-applicant Nos.3 to 7, perused the recitals of the FIR as well as the other investigation papers. From the recitals of the FIR, it reveals that there was a previous dispute between the complainant and the present non-applicant Nos.2 to 7 on account of the way in the agriculture land. The informant has narrated the

previous incident dated 04.11.2021 of cracking of the crackers in front of the house and assaulting his wife as well as son. The another incident narrated is on 14.11.2021, which took place in the agricultural field. Also perused the order passed by the learned Special Court. In a reasoning the learned Special Court had considered that allegations made in the complaint are general and omnibus in nature. There are no specific allegations against present applicants that they did any overtact against the complainant which will make out offence under SC/ST (Prevention of Atrocities) Act. On the vague and general allegations bar under Section 18 of the said Act cannot be invoked and granted the bail.

8. Present application is filed for the cancellation of bail. The considerations for grant of bail and consideration for cancellation of bail are altogether different. It is well settled that once bail granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. A very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail. In the case of ***Dolat Ram and ors vs. The State of Haryana, [1995(1) SCC 349]***, the Honourable Apex Court laid down grounds for cancellation of bail, which are as under:

- (i) interference or attempt to interfere with the due course of administration of Justice;
- (ii) evasion or attempt to evade the due course of justice;
- (iii) abuse of the concession granted to the accused in any manner;
- (iv) possibility of accused absconding;
- (v) likelihood of/actual misuse of bail, and
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

9. It is no doubt true that cancellation of bail cannot be limited to occurrence of supervening circumstances. The court has discretion to cancel the bail of an accused even in the absence of supervening circumstances, in following circumstances:

- a) where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record;
- b) where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim;
- c) where the past criminal record and conduct of the accused is completely ignored while granting bail;

d) where bail has been granted on untenable grounds;

e) where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

10. Thus, where a court considering an application for bail fails to consider relevant factors, the court has discretion to cancel the bail. While cancelling the bail, it has to be seen, whether the order granting bail suffers from non-application of mind or is not borne out from *prima facie* view of the evidence on record. Thus, it is necessary for the court to see, whether on the basis of record there existed a *prima facie* case or reasonable ground to believe that the accused has committed crime.

11. The another limb of submission of the learned Counsel for the applicant is that the learned trial has ignored the material which was collected during the investigation and *prima facie* case is made out, and thereafter also the anticipatory bail was granted to the present applicant. In support of his contention, he placed reliance on **Swaran Singh and others Vs. State through Standing Counsel and another** (supra) wherein also the aspect of referring the caste is considered by the Apex Court and it is held in para No.24 that calling a member of the Scheduled Caste by 'Chamar' with intent to insult or humiliate him in a place within public view is certainly an offence under

Section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word 'Chamar' will of course depend on the context in which it was used. The Hon'ble Apex Court further considered that today the word 'Chamar' is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person 'Chamar' today is nowadays an abusive language and is highly offensive. In fact, the word 'Chamar' when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.

12. In case of **Manju Devi Vs. Onkarjit Singh Ahluwalia @ Omkarjeet Singh and Ors.** (supra) wherein also this aspect is considered and it is held that the use of the word "Harijan", "Dhobi", etc. is often used by people belonging to the so-called upper castes as a word of insult, abuse and derision. Calling a person by these names is nowadays an abusing language and is offensive.

13. In **Arumugam Servai vs. State of Tamil Nadu** (supra) wherein also the Hon'ble Apex Court has considered the caste system and observed that the caste system is a curse on the nation and the sooner it is destroyed the better. By considering all these aspects it is held that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a

major, the couple are not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided.

14. The application of the provision of the Atrocities Act are recently considered by the Hon'ble Apex Court in the **Shajan Skaria Vs. The State of Kerala and another** in **Criminal Appeal No.2622 of 2024 decided on 23.08.2024** wherein the Hon'ble Apex Court has considered the essential ingredients of Section 3(1)(r) and observed that the basic ingredients to constitute the offence under Section 3(1)(r) of the Act, 1989 are:

- a. Accused person must not be a member of the Scheduled Caste or Scheduled Tribe;*
- b. Accused must intentionally insult or intimidate a member of a Scheduled Caste or Scheduled Tribe;*
- c. Accused must do so with the intent to humiliate such a person;*
- and d. Accused must do so at any place within public view.*

15. While considering this provision, the Hon'ble Apex Court has considered the catena of decisions and observed that all insults or intimidations to a member of

the Scheduled Caste or Scheduled Tribe will not amount to an offence under the Act, 1989 unless such insult or intimidation is on the ground that the victim belongs to Scheduled Caste or Scheduled Tribe.

16. The Hon'ble Apex Court has referred the judgement in **Hitesh Verma Vs. State of Uttarakhand reported in (2020) 10 SCC 710** wherein it is held that an offence under Section 3(1)(r) is not established merely on the fact that the victim is a member of the Scheduled Caste, unless there is an intention to humiliate a member of the Scheduled Caste or Schedule Tribe for the reason that the victim belongs to such caste.

17. In **Ramesh Chandra Vaishya Vs. State of Uttar Pradesh and Anr.** reported in **2023 SCC OnLine SC 668** wherein it is held that every insult or intimidation would not amount to an offence under Section 3(1)(x) of the Act, 1989 unless, such insult or intimidation is targeted at the victim because he is a member of a particular Scheduled Caste or Scheduled Tribe.

18 In **Prathvi Raj Chauhan Vs. Union of India** reported in **(2020) 4 SCC 727** wherein it was held that if the complaint does not make out a prima facie case for applicability of the provisions of the Act, 1989 then the bar created by Section 18 and Section 18A(i) would not apply.

19. Thus, considering the various dictums the Hon'ble Apex Court held 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 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. In other words, it is not the purport of the Act, 1989 that every act of intentional insult or intimidation meted out by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe. We say so because the object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the SC/ST communities for the reason of their caste status.

20. The Hon'ble Apex Court while expressing the intent to humiliate observed that the words "with intent to humiliate" as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation. Not every intentional insult or

intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the “upper castes” over the “lower castes/untouchables”, the notions of ‘purity’ and ‘pollution’, etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989.

21. The Hon’ble Apex Court has referred its earlier judgment **State of Madhya Pradesh Vs. Ram Krishna Balothia reported in (1995) 3 SCC 221** to further elaborate upon the idea of “humiliation” as it has been used under the Act, 1989. It was observed in the said case that the offences enumerated under the Act, 1989 belong to a separate category as they arise from the practice of ‘untouchability’ and thus the Parliament was competent to enact special laws treating such offences and offenders as belonging to a separate category.

22. Thus, by referring the various judgments, the Hon’ble Apex Court held that what appears from the aforesaid discussion is that the expression “intent to humiliate” as it appears in Section 3(1)(r) of the Act, 1989 must necessarily be construed in the larger context in which the concept of humiliation of the marginalised groups has been understood by various

scholars. It is not ordinary insult or intimidation which would amount to 'humiliation' that is sought to be made punishable under the Act, 1989. It is further observed that in our considered view, it is in a similar vein that the term 'humiliation' as it appears in Section 3(1)(r) of the Act, 1989 must be construed, that is, in a way that it deprecates the infliction of humiliation against members of the Scheduled Castes and Scheduled Tribes wherein such humiliation is intricately associated with the caste identity of such members. Finally, the Hon'ble Apex Court has concluded that the basic ingredients for constituting an offence under Section 3(1)(r) of the Act, 1989 as observed earlier and it is observed that mere knowledge of a fact that the victim belonging to the Scheduled Caste or Scheduled Tribe not sufficient to attract Section 3(1)(r) of the Act, 1989.

23. By applying the above said ratio laid down by the Hon'ble Apex Court, wherein the Hon'be Apex Court has considered that mere knowledge of the fact that the victim is a member of the Scheduled Caste or Scheduled Tribe is not sufficient to attract the provisions but the offence must have been committed against the person on the ground or for the reason that such person is a member of Scheduled Caste or Scheduled Tribe.

24. The allegations are considered in the present case admittedly, there was a dispute on account of the way which was proceeding from the land of the complainant and therefore, due to that dispute the

alleged incident is occurred and during the altercation of the words, the reference of the caste was there. Thus, it cannot be said that it was with intent to intimidation or with intention to humiliate the present complainant. Thus, the every act of the intention or insult or intimidation as not covered under Section 3(1)(r) of the Act and the provisions cannot be attracted merely because it is committed against the persons who happens to be the members of the scheduled Castes or Scheduled Tribes.

25. The another aspect whether bar under Section 18 is attracted in every circumstances. This aspect is also considered by the Hon'ble Apex Court in the same judgment and it is held that the constitutional validity of Section 18 of the Act was challenged before the Hon'ble Apex Court in the case of **State of Madhya Pradesh Vs. Ram Krishna Balothia** (supra) on the ground that Section 18 is violative of Article 14 of the Constitution as the benefit of Section 438 of the CrPC is available to an accused for offences under the Indian Penal Code, 1860 but the same is not available for offences under the Act, 1989.

26. The aforesaid decision of the High Court was challenged before the Apex Court which allowed the appeals and held that Section 18 of the Act cannot be considered as violative of Articles 14 and 21 respectively of the Constitution. While considering these aspects Hon'ble Apex Court has considered its previous decision

in **Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra and another** reported in **(2018) 6 SCC 454** as well as **Prathvi Raj Chauhan Vs. Union of India** referred supra and it is held that although Section 18 of the Act, 1989 creates a bar for invoking Section 438 of the CrPC yet the courts are entrusted with a duty to verify the averments in the complaint and to find out whether an offence under the Act, 1989 is prima facie made out or not. It was further observed that while considering the application for anticipatory bail, the scope for appreciation of evidence and other material is limited and the courts are not expected to undertake an intricate evidentiary inquiry of the materials on record.

27. By referring the judgment of **Arnesh Kumar Vs. State of Bihar and another** reported in **(2014) 8 SCC 273**, **Satender Kumar Antil Vs. Central Bureau of Investigation** reported in **(2022) 10 SCC 51** it is held that thus it can be seen that the bar under Section 18 of the Act, 1989 would apply only to those cases where prima facie materials exist pointing out towards the commission of an offence under the Act, 1989. It is only when a prima facie case is made out that the pre-arrest requirements as stipulated under Section 41 of CrPC could be said to be satisfied. The Hon'ble Apex Court further clarifies that prima facie is a Latin term that translates to "at first sight" or "based on first impression". The expression "where no prima facie materials exist warranting arrest in a complaint or FIR" should be understood as "when

based on first impression, no offence is made out as shown in the FIR or the complaint". This means that when the necessary ingredients to constitute the offence under the Act, 1989 are not made out upon the reading of the complaint, no case can be said to exist prima facie.

28. In the light of the aforesaid observations, if the facts of the present case are taken into consideration there is no dispute as to the fact that there was a previous dispute between the complainant and present non-applicant Nos.2 to 7. It is alleged that they have used the words by referring the caste. If the entire recitals of the FIR are taken into consideration i.e. the omnibus allegation made against all the non-applicant Nos.2 to 7. There is no specific allegation against any of them. Thus, learned trial Court has considered the same and also observed that omnibus allegation which is in the nature of general allegation is not sufficient to attract the bar under Section 18 of the Act of 1989, and thereby allowed the application. I do not find any ground to interfere with the said order, as the learned Special Court has considered the legal aspect as to the bar under Section 18 of the Act of 1989 and general allegation is made and therefore, bar under Section 18 of the Act of 1989 is not attracted and released the non-applicant Nos.2 to 7 on bail.

29. On perusal of the order passed by learned Special Court, it nowhere appears that the learned

Special Court has ignored the material which is brought before the Court in the nature of the investigation papers. Thus, I do not find any reason to interfere with the said order and therefore, the application for cancellation of bail is devoid of merits and liable to be rejected. Accordingly, I proceed to pass following order:

The application is rejected.

(URMILA JOSHI-PHALKE, J.)