
(2019) 06 BOM CK 0054

Bombay High Court (Aurangabad Bench)

Case No: Criminal Appeal No. 260 Of 2019

Govind

APPELLANT

Vs

State Of Maharashtra
And Ors

RESPONDENT

Date of Decision: June 13, 2019

Acts Referred:

- Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 - Section 3(1), 3(1)(r)(s), 18, 18A, 18(A)(2)
- Indian Penal Code, 1860 - Section 354, 438, 506
- Constitution Of India, 1950 - Article 17

Hon'ble Judges: A.M. Dhavale, J

Bench: Single Bench

Advocate: Rajendra S. Deshmukh, Y.G. Gujarathi

Final Decision: Dismissed

Judgement

1. The appellant challenges the order passed by the Id. Addl. Sessions Judge, Nanded, in Criminal Bail Application No. 71 of 2019 dt. 08.02.2019,

rejecting the application for anticipatory bail on the Ground that it was barred by Section 18 of the Scheduled Caste and Scheduled Tribe (Prevention

of Atrocities) Act (hereinafter referred to as "SC&ST Act"). The appellant had claimed anticipatory bail in Crime No. 12 of 2019 of Vazirabad

Police Station registered on the basis of FIR of respondent No. 3 for offences punishable u/s 506 IPC and u/s 3(1)(r)(s) of SC & ST Act.

2. As per the FIR dt. 19.01.2019, on the same day at 06:00 to 07:00 p.m., the informant Vikas Salve, a Police Constable was proceeding to Civil

Hospital, Vazirabad. That time, the appellant, who is brother of lady Constable Anusaya Kendre against whom the informant had filed case under SC

& ST Act met him in the parking space and addressed him as "egkj /ksmxhp;k y; ektykl rqfÂ;k xkamhyk >kmw cka/kqu rpyk xkohkj xk

rq>h f/kam dk

he would tie a broomstick to his buttocks and would parade him on a donkey seat in village). He was also threatened that, his mother and sister would

be killed. The informant also stated that, the appellant threatened that he was political leader and his brother was carrying a pistol and he would kill his

family. He apprehended danger to himself and his family at the hands of the appellant.

3. Shri. R. S. Deshmukh, learned counsel for the appellant argued that, the appellant's sister Anusuya who is a lady Constable was harassed by the

informant and she had filed case u/s 354 IPC against him which ended into conviction. On account of the same, the informant had filed case under

Atrocities Act against the appellant. He had also given threats to the witness Zaker and Ashwini from the said case and they had also lodged FIR

against him. He had threatened Anusuya to withdraw the case and she had filed report to that effect. The informant was in habit of filing false cases

by misusing his caste. The FIR is mala fide and it is filed only to harass the appellant and his sister Anusuya. Shri. Deshmukh relied on para 56 of the

judgment in Dr. Subhash kashinath mahajan vs. State of maharashtra reported in 2018 (6) SCC 454 wherein it is held that, when the complaint filed is

mala fide, motivated and false, the bar u/s 18 of the SC & ST Act is not attracted and this Court has power to grant anticipatory bail.

4. Per contra, learned Addl. Public Prosecutor and learned advocate for the respondent No. 3 argued that the FIR shows specific averments

specifying the ingredients of offences under SC&ST Act. The informant is belonging to Mahar community which is Scheduled Caste Category and

the appellant belongs to Vanjari caste. He was Intentionally insulting and humiliating the informant. There are eye witnesses to the incident. The bar

u/s 18 is attracted. Section 18(A) (2) prohibits grant of anticipatory bail in any case notwithstanding any judgment, order or direction.

5. Shri. R. S. Deshmukh, learned counsel for the appellant relied on para 21 in the judgment in *lahu S/o. Vitthalrao bhosale Vs. The state of*

maharashtra And Anr (Cri. Appeal No. 194 of 2019) decided by the Division Bench of this Court on 03.04.2019, wherein it is held that, in spite of

amendment introducing Section 18A, the legal position is not changed and this Court has power to verify whether prima facie case is made out or not

disclosing offences under SC&ST Act and if such offences are not disclosed, the liberty of innocent person cannot be deprived and the bar is not

attracted.

6. In *vilas pandurang pawar And Another Vs. State of maharashtra And others* reported in 2012 (8) SCC 795, the law with regard to scope of this

Court in considering the application for anticipatory bail in cases involving SC & St Act has been explained as follows.

9. Section 18 of the SC/ST Act creates A bar for invoking Section 438 of the Code. However, A duty is cast on The court to verify the averments in

the complaint And to find out whether An offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is A

specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons Are not

entitled to anticipatory bail.

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 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. 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.

7. This judgment has been regularly followed. In *Manju Devi Versus Onkarjit Singh Ahluwalia alias Omkarjeet Singh And others* reported in (2017) 13

SCC 439. In para 21 and 22 of the said judgment, it is observed that the plea that the complaint is false and malicious and to wreak vengeance by the

brother of respondent cannot be looked into at the stage of taking cognizance and issue of process. When any woman of SC or ST category is

assaulted with intent to dishonour or outrage her modesty is an aggravated form of the offence, in such case, bar u/s 18 is attracted and anticipatory

bail cannot be granted. In this case, it is also held that, even calling a Person belonging to SC or ST as Harijan or Dhobi amounts to intentional insult or

humiliation.

8. In *Dr. Subhash Mahajan's case* (supra), it is observed in para 56 which reads thus:

56. There can be no dispute with the proposition that mere unilateral allegation by Any individual belonging to Any caste, when such allegation is

clearly motivated And false, cannot be treated AS enough to deprive A person of his liberty without An independent scrutiny. Thus, exclusion of

provision for anticipatory bail cannot possibly, by Any reasonable interpretation, be treated AS applicable when no case is made out or allegations Are

patently false or motivated. If this interpretation is not taken, it may be difficult for public servants to discharge their bona fide functions And, in given

cases, they can be black mailed with the threat of A false case being registered under the Atrocities Act, without Any protection of law. This cannot

be the scenario in A Civilized society. Similarly, even A non public servant can be black mailed to surrender his civil rights. This is not the intention of

law. Such law cannot stand judicial scrutiny. It will fall foul of guaranteed fundamental rights of fair And reasonable procedure being followed if A

person is deprived of life And liberty. Thus, literal interpretation cannot be preferred in the present situation.

9. In the present case, I find that, though the enmity is brought on record and the past conduct created some doubt, it is not disputed that the informant

is belonging to SC and there are specific averments in the FIR disclosing the offence under SC & ST Act. There are two eye-witnesses. In the light

of these facts, at this stage only on the basis of enmity with sister of the accused, it will not be Possible to come to a conclusion that FIR filed by the

respondent No. 3 is false, malicious and motivated.

10. It is no doubt true that, when any of these allegations regarding abusing in the name of caste are made against innocent person, he is required to

undergo agony of prosecution and trial. However, in the light of the judgment in Vilas Pawar's case (supra), I hold that, the bar of Section 18 r/w S.

18(A)(2) is certainly attracted.

11. In Lahuji Bhosale's case, it is held that, Section 18(A)(2) does not take away the jurisdiction of this Court to find out whether the prima facie case

is made out or not.

12. The Apex Court in shakuntla Devi Versus baljinder Singh reported in (2014) 15 SCC 521 held that, unless the court records finding, no offence

under SC & ST Act is made out, this Court cannot overlook the bar u/s 18 of the SC & ST Act. In the facts and circumstances of this case, I find

that, when no such finding can be recorded, the bar of Section 18 is applicable and bail application cannot be considered.

13. It may be observed that, there are large number of offences under SC&ST Act. As per Article 17 of the Constitution of India, the untouchability

has been abolished and the object of SC & ST Act is to see that nobody practices untouchability. The act has been held to be not ultra vires. It is

common knowledge that, persons from SC & ST categories still face ill-treatment in various forms only on account of the fact that they belong to SC

or ST Category. Therefore, if such an offence is disclosed, the court will not exercise the powers of grant of anticipatory bail. But there are several

cases in which only the allegations made are about abusing in the name of caste with intention to insult or humiliate coupled with some minor assaults.

Indeed, when FIR shows specific averments disclosing commission of offences under SC & ST Act, it is very difficult at the initial stage to determine

whether the FIR is lodged for wreaking vengeance or motivated and false or otherwise is true. If the offences are not serious and there is no

likelihood of tampering of prosecution witnesses or there is no likelihood of the accused absconding after arrest, the court grants regular bail. In such

cases, the custodial investigation is also not necessary.

14. In *Arnesh Kumar Versus State of Bihar and another* Reported in (2014) 8 SCC 273, the Investigating Officer should be Judicious in using his

discretion while causing the arrest.

15. The arrest cannot be made only with intention to harass the accused, who is presumed to be innocent. It cannot be caused only to please the

informant or the victim. The basic intention of arrest is to explore the possibility of quality investigation by interrogation of the accused and thereafter

the detention is only with intention to prevent the abscondance of the accused or tampering of the prosecution witnesses or sometimes for preventing

commission of similar offences by the accused. If these possibilities are not there, the accused are regularly released on bail.

16. In such situation, if the application for anticipatory bail is not maintainable in view of the bar u/s 18, it will be more convenient for all if the accused

instead of filing application u/s 438 surrender himself before the Special Judge and seeks bail. In *R. Madhusudhan Versus state of karnataka* And

Another reported in (2017) 14 SCC 233, this course was adopted by the Apex Court with direction to decide the bail application on same day.

17. If the Special Judge having regard to all the circumstances finds that the custodial investigation is not necessary, there is no Possibility of

abscondance or tampering of the witnesses and there is no other ground for rejecting the bail application, he can decide the bail application on the

same day and grant bail in appropriate cases. These observations are made without suggesting any interference with the right of Sessions Judge to

decide the application on merits.

18. With these observations, the application is rejected.

Interim relief stands vacated.