

Order Below Exh.1 in Cri. Bail Appln. No. 222/2022
(CNR No. MHNS010006362022)

Kushal @ Lalu Prabhakar Wagh Vs. State

Heard: Ld. Adv. Mr. A. G. Patil for the applicant.
Ld. A.P.P. Ms. S. S. Sangle for the State.
Perused the say of the complainant.

1] This is an application under section 438 of the Code of Criminal Procedure in Crime No.7/2022 registered at Police Station Kalwan, Dist. Nashik for the offence under sections 143, 147, 149, 354, 324, 504, 506 of the Indian Penal Code and Sections 3(1)(x), 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act'). It is the case of prosecution in brief that when the complainant was working in her field, the accused/applicant came there and started breaking the pipe located in her field. When she reprimanded and abused them, they manhandled her and molested her.

2] Ld. Adv. for the applicant has submitted that the perusal of the entire FIR would indicate that no case under the Atrocities Act has been made out against the applicant. There is no caste-based utterance (leave alone abuse) made to the victim which would amount to an offence under the purview of the Atrocities Act. In order to buttress his contentions further he has relied on the following citations :-

(i) Kiran s/o. Madhukar Ingle V/s. The State of

Maharashtra & Anr. 2019 ALL MR (Cri) 2825. In this matter, an anticipatory bail application was filed by the accused against whom offence under Sections 3(1)(r) and 3(1)(s) was registered. Allegations in FIR did not show intentional insult or intimidation with intent to humiliate complainant- member of SC/ST

community, within public view by the accused. It was held by the Bombay High Court that in the absence of *prima-facie* material on record to draw inference that the accused had committed an offence U/S. 3(1)(r)(s) of SC/ST Act, consideration of application for anticipatory bail U/S. 438 Cr.P.C. was not barred (more so when offenses under the Indian Penal Code with which the accused was charged were bailable in nature). It was held that the accused was entitled to pre-arrest bail u/S. 438, Cr.P.C.

(ii) Sangita Popat Bhosale Vs. The State of Maharashtra & Anr., 2021 ALL MR (Cri) 2334 wherein it has been held that only by considering contents of FIR, it cannot be concluded that application for pre-arrest bail is not maintainable in view of S.18-A of Act of 1989. Therefore, whether FIR is tainted or not is to be considered. In this case, record indicated that applicant had earlier filed an FIR against the respondents and thereafter only they have filed present FIR. Further, there was delay in filing FIR. It was held that it shows that the FIR is filed by respondents as a counter-blast to FIR filed by applicant. It was held that the Special Judge had erred in concluding that *prima-facie* case was made out and had thus erred in rejecting bail.

3] Ld. Adv. for the applicant has submitted that there is admittedly an ongoing property dispute (since the past several years) between the in-laws of the complainant and the applicant. Applicant has filed documents in order to substantiate this argument. Moreover, there is delay in lodging FIR. The in-laws of the complainant have taken undue advantage of the complainant belonging to SC/ST community and have used it as a weapon to falsely implicate the applicants. The FIR is clearly tainted. Even if

the contents of the FIR are taken at their face-value, no offence under the purview of the Atrocities Act is made out. The bar imposed by Section 18 of the Atrocities Act would therefore not be applicable to the facts of the case. All the other Sections under the IPC areailable. Custodial interrogation of the applicant is not necessary in the facts of the case. Even the alleged offence did not take place in a public place, but admittedly in the field of the complainant. Other co-accused with similar roles have been granted anticipatory bail by this Court. Applicant has complied with the terms and conditions imposed by the Court while granting interim relief. Therefore, this application ought to be allowed on the ground of parity.

4] The complainant has opposed the application.

5] Per contra, Ld. APP has opposed the application on the ground that custodial interrogation of the applicant is necessary. There is *prima-facie* case against the applicant.

6] In the case at hand, even if all the allegations in the FIR are taken at their face-value and are read as a whole, even then, no case under the Atrocities Act has been made out against the applicants. There is no caste-based utterance (leave alone abuse, humiliation or insult) either in public view or even otherwise made to the complainant. There is absolutely no allegation in the FIR which would constitute an offence under the Atrocities Act. Citations in the case of **Kiran (Supra)** and **Sangita (Supra)** are squarely applicable to the facts of the present case. Bar of Section 18 under the Atrocities Act is not

applicable to the facts of the case. The only allegation against the applicants is that they tried to break the pipe located in the field of the complainant and molested her.

7] There is admittedly an ongoing property dispute between the in-laws of the complainant and the applicant. Even the alleged offence did not take place in a public place, but admittedly in the field of the complainant. Nothing needs to be recovered from the applicant. Considering the allegations against the applicant, his custodial interrogation does not appear to be necessary. He has complied with the terms and conditions imposed by the Court while granting interim relief. Other co-accused with similar role have been released on bail. In view of the foregoing discussion, I am inclined to allow the application in terms of the following order :-

ORDER

- 1) Application is allowed.
- 2) Interim order dated 28/02/2022 passed below Exh. 4 is hereby confirmed on the same terms and conditions.

Nashik
07/03/2022

Mridula Bhatia
District Judge - 2 and
Additional Sessions Judge, Nashik.