

Order Below Exh.1 in Cri. Bail Appln. No. 253/2022
CNR No.MHNS010007932022

Anil Shivaji Dhatrak & 2 others Vs. State.

Heard: Ld. Adv. Ms. R. D. Avhad for the applicants/
accused.
Ld. A.P.P. Smt. S. S. Sangle for the State.
Perused the say of the complainant.

1. This is an application under section 439 of the Code of Criminal Procedure in Crime No.69/2022 registered at Police station, Dindori, Dist. Nashik for the offence punishable under Sections 143, 147, 435, 504 & 506 of the Indian Penal Code, 1860 and Sec. 3(1)(r)(s) 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 the accused persons (including the applicants) gutted down the bamboos of the complainant (which were meant for making huts) and also went to her house the next day and hurled caste-based abuses at her.

2. Ld. Adv. for the applicants has submitted that the incident is divided in two parts : the first part relates to gutting down the bamboos and the second relates to the alleged caste-based abuses. There is a delay of one day in lodging the FIR regarding the first incident and of 10 hours about the alleged second incident. The FIR is false and fabricated and is filed with *malafide* intention as an after-thought. Role of the accused persons is not specified. The land at which the bamboos were

allegedly gutted by the applicants belongs to the Government. He has filed on record various documents including 7/12 extract of the said land to demonstrate the same. He has also filed on record a copy of the Government Resolution (G.R.) which categorically states that the said land belongs to the Government and should not be allotted to any other party. He has also filed on record a copy of the order of the Grampanchayat rejecting the application of the complainant claiming the said land. It is because the said application was rejected that the complainant has chosen to deploy this devious mean of lodging a false FIR. It is pertinent to mention that applicant No. 1 is the Sarpanch of the village, while applicant No. 2 is a member of the Grampanchayat. There is nothing (not even a *Gharpatti*) to indicate that the complainant owns the said land. Nothing has been recovered at the instance of the accused persons during their custodial interrogation. There is a counter FIR about the same incident in which complainant has been released on bail. The house of the complainant is safe.

3. As far as the incident about hurling abuses is concerned, even as per the FIR it did not take place in a public place, but outside the house of the complainant. Moreover, even in the FIR, no specific caste-based abuses or insults have been mentioned. There is mere utterance of the caste of the complainant and it is stated that, ‘‘तुम्ही कोळी लय माजले’’(you Kolis are very arrogant). It is a settled position that mere

utterance of the caste would not amount to giving a caste-based abuse. Applicants are ready to abide by the terms and conditions imposed by the court. In order to buttress his contentions further, he has relied on the citation in the case of **Hitesh Verma V/s. The State of Uttarakhand Laws (SC) - 2020-11-17**. In this matter, it was held by the Apex Court that since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe.

In the case at hand also, there is admittedly an ongoing property dispute between the parties. This Court has already provided police protection to the complainant. Therefore, there is no question of the applicants threatening or intimidating the prosecution witnesses.

4. Per contra, Ld. A.P.P. has opposed the bail application on the ground that there is *prima-facie* case against the applicants. Investigation is in progress and charge-sheet is yet to be filed. If the applicants are released on bail, there are chances of tampering with prosecution witnesses.

5. Perusal of the FIR indicates that the incident is divided in two parts : the first part relates to gutting down the bamboos and the second relates to the alleged caste-based

abuses. There is a delay of one day in lodging the FIR regarding the first incident and of 10 hours about the alleged second incident. 7/12 extract of the land has been filed on record to demonstrate that the land on which the bamboos were gutted belongs to the Government. Similarly, a copy of the Government Resolution (G.R.) stating that the said land belongs to the Government has also been filed on record along with a copy of the order of the Grampanchayat rejecting the application of the complainant claiming the said land. There is nothing to indicate that the complainant owns the said land. Nothing has been recovered at the instance of the accused persons during their custodial interrogation. There is a counter FIR about the same incident in which complainant has been released on bail.

6. As far as the incident about hurling abuses is concerned, even as per the FIR it did not take place in a public place, but outside the house of the complainant. Moreover, even in the FIR, no specific caste-based abuses or insults have been mentioned. There is mere utterance of the caste of the complainant and it is stated that, ‘‘तुम्ही कोळी लय माजले’’(you Kolis are very arrogant). It is a settled position that mere utterance of the caste would not amount to giving a caste-based abuse. Similarly, it is also a settled position that the caste-based insult should be inflicted in a public place.

Citation in the case of **Hitesh Verma (Supra)** is squarely applicable to the present case in as much as there is an

ongoing civil/property dispute between the parties. Applicants are ready to abide by the terms and conditions imposed by the court. This Court has already provided police protection to the complainant. In view of the foregoing discussion, I am inclined to allow the application subject to the following terms and conditions.

ORDER

- 1] Application is hereby allowed.
- 2] Applicants Anil Shivaji Dhattrak, Sampat Balasaheb Avhad & Madan Keshav Avhad be released on bail by executing P.R. and S.B. of ₹30,000/- each with one or two sureties of like amount.
- 3] Applicants shall not directly or indirectly, make any inducement, threat or promises to any person acquainted with the facts of accusation, so as to dissuade him/her from disclosing such facts to the Court or to the police officer and shall not tamper with the prosecution evidence in any manner.
- 4] Applicants shall not commit any offence and shall attend all dates of hearing.
- 5] Applicants are duty bound to inform the I.O. and the court about their change of address, if any.
- 6] Applicants shall furnish residence and ID proof of two blood relatives to the I.O.

Nashik
09/03/2022

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