

Order Below Exh.1 in Cri. Bail Appln. No. 259/2022
(CNR No. MHNS-010008062022)

Lalitkumar Mohanlal Parakh & another Vs. State

Heard: Ld. Adv. Mr. P. P. Kochar for the applicants.
Ld. A.P.P. Ms. S. S. Sangle for the State.
Ld. Adv. Mr. R. N. Kamble for the
interventionist.
Perused the say filed by the complainant.

1] This is an application by accused No. 2 and 3 under section 438 of Criminal Procedure Code in Crime No.28/2022 registered at Ghoti Police Station, Nashik for the offence under Sections 354, 376, 377, 323, 504, 506 & r/w S. 34 of the Indian Penal Code, 1860 (I.P.C.) and Secs. 3(1)(r)&(s), 3(1)(w)(i)&(ii), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Atrocities Act). The offence was initially registered at Upnagar Police Station (as 'zero' C.R.) and later transferred to Ghoti Police Station. It is the case of prosecution in brief that the accused No. 1 and the victim were introduced to each-other on Instagram. Thereafter, they started dating each-other. Both of them are married and living with their respective spouses and children. Accused No. 1 committed forcible intercourse with the victim on the false promise of marriage on several occasions. On one occasion, the family members of the accused No. 1

[including the applicants : brother and uncle of accused No. 1] verbally abused her and physically assaulted her by manhandling and also told her, “Should we make a lower caste person from a *Mahar* caste like you a daughter-in-law of this family?” Initially, the husband of the victim lodged an N.C. and the FIR came to be lodged much later. Several days thereafter, the provisions of the Atrocities Act came to be added.

2] Ld. Advocate for the applicants has submitted that the FIR is nothing but a gross misuse and abuse of the provisions of law, in as much as the applicants are women. There is no allegation of sexual assault against them. They have been falsely implicated to arm-twist the prime accused. Custodial interrogation of the applicants is not necessary. There is gross and unexplained delay of almost 20 days in lodging FIR. The incident is dated 18/01/2022, whereas the FIR is dated 07/02/2022. The FIR is tainted which can be seen from the fact that in the N. C. lodged by the husband of the complainant, there is no whisper of any allegation under the Atrocities Act. The provisions of the Atrocities Act were added much later purely with a view to harass the accused persons. Even now, the only allegation under the Atrocities Act is that the applicants told the victim that “Should we make a lower caste person from a *Mahar* caste like you a daughter-in-law of this family?” Moreover, the said words were allegedly not spoken in public view. It is a well-settled legal position that it is only when independent witnesses notice the incident that it can be stated to be in public view. The applicants did not even know the caste of the victim. There is no averment in the FIR also that the

applicants knew the caste of the victim. There is no caste-based insult or abuse even allegedly hurled on the victim by the applicants. Perusal of the FIR indicates that the FIR is tainted and wrecks with *malafides* and even allegedly there is only mere utterance of the caste of the victim which is not in public view. Therefore, bar under Section 18 of the Atrocities Act would not be applicable.

3] In order to buttress his contentions further, Ld. Adv. for the applicant has relied on the following citations :-

(i) **Kedarsingh Dharma Patil & Anr V/s. The State of Maharashtra & anr. 2019 All MR (Cri) 2974.** In this matter, it was held that in spite of bar u/S. 18 of SC/ST Act, it is still open to the Court to find out whether looking at the FIR itself, *prima-facie* case is made out by the complainant against the accused. As per S. 3 there must be *prima-facie* affirmation or say in FIR that accused is not a member of SC or ST. Also, it is to be stated that accused were aware or had knowledge that complainant belonged to ST category. Absence of same will have serious impact as to allegations to constitute offence. Also, FIR should show that there was intent or *mens rea* to humiliate the complaint on her caste within public view. In this case, it was held that the accused was entitled for pre-arrest bail.

(ii) Raju @ Rajendra Dashrath Khaire & Anr V/s. The State of Maharashtra & anr. 2020 All MR (Cri) 140. In this matter, it was held by the Hon'ble Bombay High Court that since there was no material on record to make out a case under the Atrocities Act, bar under Section 18-A of the Atrocities Act would not be applicable and application for pre-arrest bail can be entertained.

(iii) Nitin s/o. Sampatrao Maske & Anr V/s. The State of Maharashtra & anr. 2019 All MR (Cri) 2983. In this matter, it was held by the Hon'ble Bombay High Court that as per S. 3 there must be *prima-facie* affirmation or say in FIR that accused is not a member of SC or ST. Also, it is to be stated that accused were aware or had knowledge that complainant belonged to ST category. Absence of same will have serious impact as to allegations to constitute offence. In this case, it was held that the accused was entitled for pre-arrest bail.

(iv) Suryakant s/o. Vitthalrao Shelke & Anr V/s. The State of Maharashtra & anr. 2019 All MR (Cri) 2194. In this matter, it was held that bare uttering word "*Chambhar*" would not be sufficient to draw inference that appellants were aware about caste of complainant. It was held that therefore provisions of SC/ST Act were not attracted and statutory bar u/S. 18 would not apply.

(v) Ms. Gayatri @ Apurna Singh V/s. State & anr. W.P. (Cri) 3083/2016. In this matter, proceedings under the provisions of the Atrocities Act were quashed against the applicant. It was held in para 10 as follows:

*“10. In the present case the original complaint lodged by the complainant does not mention in whose presence the offending words were used by the respondent/accused persons... There is nothing on record to show that the offending words were used in full public view. The names of alleged witnesses are not mentioned in the complaint dated 18/7/2012. The witnesses i.e. Meenakshi and Durga Dutt have alleged themselves to be the eye witnesses. But their names have not been stated by the complainant in her complaint. The supplementary statement dated 27/8/2012 of the complainant giving the names of alleged witnesses can't fill up the lacuna. There is also delay of 3 days in lodging the Fir. The delay is not explained. The basis ingredients of Section 3(x) of the SC/ST Act **are missing** in the present case.....”*
(emphasis supplied).”

(vi) Shashikant Ramhari Tambe & ors V/s. The State of Maharashtra Criminal application No. 2054 of 2008. In this case, anticipatory bail was granted to the accused by the Hon'ble Bombay High Court. It was held in para 5 as follows :

“5. Useful reference may be made to a decision of the Supreme Court in the case of *Mukesh Kumar Saini Vs. State (Delhi Administration)* reported in 2002 All MR (Cri) JOURNAL 41. In the said case, it was observed that there must be specific accusation alleged against each of the accused and Section 34 of the Indian Penal Code cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating words may not be enough. In the present case, there is no specific accusation alleged against each of the accused. Looking to the above facts, I am inclined to grant anticipatory bail to the applicants.”

5] Per contra, Ld. A.P.P. has opposed the bail application on the ground that there is *prima-facie* case against the applicants. Custodial interrogation of the applicants is necessary. Moreover, the said application is barred by Section 18 of the Atrocities Act.

6] In order to buttress her contentions further, she has relied on the following judgments/ citations :

(i) In an unreported judgment dated 18th October, 2012 in Cri. Appeal No. 1406 of 2012 (**Kishor Samrite V/s. The State of U. P. & ors.**), it was held by the Apex Court that a party should approach the Court with clean hands.

(ii) In an unreported judgment dated 10th September, 2012 in Special Leave Petition (Cri.)

No.6432 of 2012 (**Vilas Pandurang Pawar & Anr. V/s. State of Maharashtra & ors.**), the petitioners and other accused persons abused the complainant and her husband by calling their caste (*Mahar*) and assaulted them for their action of letting rain water to their field. It was held that the petitioners were not entitled to anticipatory bail under Section 438 of the Cr.P.C. It was held in paras 8 & 9 as follows :-

“8. *Sections 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 person are not entitled to anticipatory bail.*

9. *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] Ld. A.P.P. has submitted that the said citations are squarely applicable to the facts of the present case. *Prima-facie* case under Section 3(1) of the Atrocities Act is made out against the applicants and that therefore they are not entitled to anticipatory bail.

8] I have heard both the Ld. Advocates at length and have perused the case diary. Following are the admitted facts :

- i) There is a delay of almost 20 days in lodging FIR.
- ii) The N.C. lodged about the incident does not contain any allegation under the Atrocities Act.
- iii) The provisions of the Atrocities Act were added much later after the FIR was registered.

9] It is the own case of the victim that she was in a consensual relationship with the accused (albeit on the promise of marriage). It is an admitted position that the victim is a major and is married and also has a child. It is also reflected from perusal of the FIR that the victim was aware of the marital status

of the accused No.1. Taking this into consideration, a promise of marriage seems preposterous. As held in the case of **Vilas (Supra)**, 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 the light of the above admitted facts/factual matrix, the FIR does appear to be tainted. There is unexplained delay in lodging FIR. Moreover, it is not brought out in the FIR that the alleged utterance about the caste of the victim was in public view i.e. it was heard by anybody else. Unlike in the case at hand, in the case of **Vilas (Supra)**, the accused persons had abused and assaulted the complainant for their action of letting rain-water to their field.

10] In the case at hand, there is no affirmation as per Section 3 of the Atrocities Act that the accused are not members of SC or ST in the FIR [as laid down in the case of **Kedarsingh (Supra)** and **Nitin (Supra)**]. Also, it is not stated that accused were aware or had knowledge that the victim belonged to SC Category. Also, the FIR does not show that there was intent or *mens rea* to humiliate the complainant on her caste within public view. There is no material on record to make out a case under the Atrocities Act. As per the citation in the case of **Suryakant (Supra)**, bare uttering of the word “*Mahar*” would not be sufficient to draw the inference that the applicants were aware about the caste of the victim. There are no names of witnesses in the FIR who have allegedly heard the offending words in public

view. There is no specific accusation alleged against each of the accused. Omnibus statement that all accused persons told the victim that “Should we make a lower caste person from a Mahar caste like you a daughter-in-law of this family?” may not be enough as per the citations in the case of **Gayatri (Supra)** and **Shashikant (Supra)**. In view of the foregoing discussion, I am of the considered opinion that there is no material on record to make out a case under the Atrocities Act and therefore bar under Sec. 18-A of the said Act would not be applicable (as per the case of **Raju (Supra)**).

11] No allegation of sexual assault is made against the applicants. No recovery needs to be made from them. In the facts of the case, custodial interrogation of the applicants does not appear to be necessary. Applicants are ready to comply with the terms and conditions imposed by the Court. In view of the foregoing discussion, I am inclined to allow the application subject to the following terms and conditions.

ORDER

- 1) Application Exh. 1 is allowed.
- 2) In the event of arrest of applicants **Lalitkumar Mohanlal Parakh & Paras Mohanlal Parakh**, they be released on executing P. R. bond of ₹15,000/- each with one local surety of like amount.

- 3) Applicants shall attend the concerned Police Station as and when called by the I.O.
- 4) Applicants shall co-operate in the investigation and shall not tamper with the prosecution witnesses.
- 5] Applicants shall not threaten or intimidate the victim and shall not commit any offence.

Nashik
10/03/2022

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