

Order Below Exh.1 in Cri. Bail Appln. No. 249/2022
(CNR No. MHNS-010007852022)

Sharad Chandrakant Bodke & 3 others Vs. State

Heard: Ld. Adv. Mr. R. D. Avhad for the applicant.
Ld. A.P.P. Ms. S. S. Sangle for the State.
Perused the say filed by the complainant.

1. This is an application under section 438 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. There is nothing (not even a *Gharpatti*) to indicate that the complainant owns the said land. 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. In order to buttress his contentions further, he has relied on the following citations :-

(i) **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.

(ii) **Kiran S/o. Madhukar Ingle V/s. The State of Maharashtra & anr., 2019 All MR (Cri.) 2825.** In this matter, allegations in the FIR did not show intentional insult or intimidation with intent to humiliate the complainant (a member of SC/ST community) within public view. There was no *prima-facie* material on record to draw inference that accused committed offence u/S. 3(1)(r)(s) of SC/ST Act. It was held that consideration of application for anticipatory bail u/S. 438 Cr.P.C. was not barred, more so, when the offence under Penal Code with which the accused were charged, were bailable in nature. It was held that the accused were entitled to pre-arrest bail u/S. 438 of Cr.P.C.

(iii) **Dada @ Anil S/o. Navnath Murkute V/s. The State of Maharashtra LAWS (BOM) 2020 8 26.** In this matter (with similar facts), anticipatory bail was given to the applicant.

4. This Court has already provided police protection to the complainant. Therefore, there is no question of the applicants threatening or intimidating the prosecution witnesses. There is no necessity of custodial interrogation of the applicants. They are ready to abide by the terms and conditions imposed by the court.

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. 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 Gram-Panchayat rejecting the application of the complainant claiming the said land. Nothing has been recovered at the instance of the co-accused during their custodial interrogation. There is a counter-FIR about the same incident in

which complainant has been released on bail.

7. 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.

8. Citations in the case of **Hitesh Verma (Supra)**, **Kiran (Supra)** and **Dada @ Anil (Supra)** are squarely applicable to the present case. No recovery needs to be made from the applicants. Applicants are ready to abide by the terms and conditions imposed by the court and co-operate with the investigating agency. This Court has already provided police protection to the complainant. In the facts of the case, custodial interrogation of the applicants does not appear to be necessary. 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 Sharad Chandrakant Bodke, Shashikant Tukaram Bodke, Anil Jagannath Bodke & Tushar Ashok Bodke 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
09/03/2022

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