

**Umesh Vs. State**

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**Court :** Delhi

**Decided On :** Jul-28-2014

**Judge :** Pratibha Rani

**Appellant :** Umesh

**Respondent :** State

**Judgement :**

I~11 \* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision :

28. h July, 2014 % + BAIL APPLN. 752/2014 UMESH Through: ..... Petitioner Mr. Sumit Sarna, Advocate. versus STATE Through: ..... Respondent Mr. Neeraj Kumar Singh, APP for the State. PRATIBHA RANI, J.

(ORAL) 1. The Petitioner is seeking anticipatory bail in case arising out of FIR No.58/2014 registered at Police Station Baba Haridas Nagar under Sections 147/149/323/354/506/34 IPC & Section 3(10), 3(11) SC/ST Act.

2. Notice of the anticipatory bail application was given to the State. The State has taken the plea that since allegations for committing the offence punishable under Sections 3(1)(x) of SC/ST Act have also been made against the Petitioner, he cannot be enlarged on anticipatory bail.

3. State was directed to file the status report and in the meantime, protection was granted to the Petitioner by directing that no coercive action be taken against the

Petitioner subject to his joining the investigation as and when directed by the Investigating Officer.

4. On the next date of hearing i.e. on 05.05.2014, learned APP for the State informed that chargesheet has already been filed before learned Special Judge. The Complainant could not give the CCTV footage as the CCT Camera installed at her place was out of order.

5. The Petitioner has placed the CCTV footage of the camera fitted at his house and it was contended that despite advance copy having been supplied to the State, no investigation has been carried out on those lines, Investigating Agency was directed by the Court to look into the CDs, verify the same and file the status report. State was also directed to place on record the MLCs of the Complainant and her son and matter was adjourned to 28th July, 2014.

6. On 28.07.2014, Learned APP informed that the State has already placed on record the additional status report as well as the copy of the MLCs of the Complainant and her son.

7. As per the subsequent status report dated 21 st July, 2014 video clippings of dated (1) 09.01.2014 from 20:29:50 hrs to 21:11:00 hrs (2) 09.01.2014 from 20:55:00 hrs to 21:00:00 hrs (3) 09.01.2014 from 20:59:58 hrs to 21:06:00 hrs and (4) 12.01.2014 from 06:59:54 hrs to 09:30:57 hrs were seen. In the video clippings the incident is confirmed and the faces of some persons giving the beatings to the Complainant family are not clear. It is found that the clippings No.(1), (2) and (3) are the clippings of the date of incident of this case i.e. 09.01.2014 and these clippings show the incident of beatings given to the Complainant family by some persons whose faces are not identifiable as the video clippings are not clear. The video clippings do not cover the whole incident as it only covers the portion of Gali in front of the Complainants house. The clipping No.(4) of dated 12.01.2014 displays the portion of back gali showing the back gate of the house of one of the accused person Naresh. It shows the movement of persons through the gali. It also shows that the family of accused Naresh is going somewhere with their belongings. In the clipping, a PCR Van is also seen parked in the corner of gali for a short period.

8. Since copy of chargesheet has also been placed on record, perusal of the same reveals that accused Umesh Maan placed in column number 11 (e) could not be arrested despite all efforts and he had been evading his arrest. Non-bailable warrants have been issued against him. Supplementary chargesheet shall be filed against him either of his arrest or his declaring PO.

9. The Petitioner is seeking anticipatory bail in a case registered under Sections 147/149/323/354/506/34 IPC & Section 3(10), 3(11) SC/ST Act.

10. Learned counsel for the Petitioner has submitted that the four co-accused have already been released on regular bail, chargesheet has already been filed in this case. Learned counsel for the Petitioner has further submitted that the Complainant in her statement dated 05.02.2014 did not make any allegations which can attract the provisions of SC/ST Act. It is only in the subsequent statement made before the ACP on 18.02.2014 that allegations have been made which can attract the provisions of SC/ST Act.

11. Learned counsel for the Petitioner has referred to the statement of the Complainant dated 18th February, 2014 recorded by ACP Delhi Cantt, wherein she has mentioned different incidents. It has been submitted by him that the allegations of being humiliated calling them with their castes are general in nature and not specific against the present Petitioner. Learned counsel for the Petitioner has submitted that since the Petitioner has not been named to be the person who made castist remarks, in view of Mukesh Kumar Saini & Ors. Vs. State (Delhi Administration), 2001(2) JCC (Delhi) 235, the Petitioner can be enlarged on anticipatory bail.

12. Learned counsel for the Petitioner further submitted that in the statement before the ACP the accusations relating to caste remarks were allegedly made prior to 09.01.2014 or subsequently thereafter. It has been further submitted that the anticipatory bail application of the Petitioner has been rejected by the learned Additional Sessions Judge for the reason that the allegations are grave and serious without appreciating that mere allegations by the Complainant cannot be used to infringe the fundamental right of the Petitioner. It has also been submitted that FIR has been mechanically registered without specific allegations being made

against the present Petitioner. Since the Petitioner has deep roots in the society there is no chance of his absconding, hence he may be released on anticipatory bail.

13. On behalf of the State, learned APP for the State has submitted that the Petitioner had been specifically named by the Complainant in her statement before ACP. Not only that, the entire incident has taken in the public view and the Complainant family has been harassed and humiliated as they belong to the lower caste and the Petitioner and his co-accused who are from higher castes do not want them to live there and had been repeatedly threatening them to sell their house and leave that place. Learned APP for the State has further submitted that in view of the status report and video clipping confirming the incident, the facts and circumstances of the case and the offences for which the Petitioner has been booked, the prayer for anticipatory bail may be rejected.

14. I have considered the rival contentions as well as status reports and the statement made by the Complainant before the ACP on 18th February, 2014. In her statement dated 18.02.2014 recorded by the ACP, the Complainant has referred to the incidents when she and her family had been humiliated by making casteist remarks and making their life hell for living at a place where members of higher caste are living and being humiliated and insulted on regular basis.

15. Section 18 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989 (hereinafter referred as SC/ST Act) reads as under:

18. Section 438 of the Code not to apply to persons committing an offence under the Act. Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

16. A bare reading of the Section shows that it is an absolute bar on the applicability of Section 438 of the Cr.P.C to any case involving the arrest of any person on an allegation that he has committed an offence under the SC/ST Act. In *Villas Panduranga Pawar and Anr. vs. State of Maharashtra & Ors.*, (2012) 8 SCC795 it was held that the bar of Section 18 of the SC/ST Act is absolute unless

it can be shown that there is no specific averment in the complaint about the uttering of the caste name or remark. It was also observed that the provisions of Section 18 of the SC/ST Act cannot be easily brushed aside by elaborate discussion on the evidence.

17. In my view, the Petitioner being named to be one of the persons who had harassing and humiliating the Complainant and her family by making castist remarks which had also resulted in a quarrel in which the Complainant and her son suffered injuries, I do not find it be a fit case to enlarge the Petitioner on anticipatory bail. Apart from above ground, it may be noted that as per the chargesheet, the Petitioner had been absconding and his name has been kept in Column No.11(e) and to file supplementary chargesheet against him only in case he is arrested or declared proclaimed offender.

19. In the case of Lavesh Kumar vs. State (NCT of Delhi) 2012(8) SCALE303 it was held as under :10. From these materials and information, it is clear that the present Appellant was not available for interrogation and investigation and declared as absconder. Normally, when the accused is absconding and declared as a proclaimed offender, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail. 20. Looking into the accusations against the present Petitioner and his conduct that he was not available to Investigating Agency till the filing of the chargesheet against his co-accused persons, I do not find it be a fit case to enlarge the Petitioner on anticipatory bail. Accordingly, bail Application is hereby dismissed. PRATIBHA RANI, J July 28, 2014 st

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