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Court : Karnataka

Decided On : Jun-23-2017

Judge : The Honourable Mrs. Justice Rathnakala

Appeal No. : Criminal Petition Nos. 4831 & 4840 of 2017

Appellant : S. Vikram and Others

Respondent : State of Karnataka, Rep. by its SPP

Judgement :

(Prayer: This Criminal Petition is filed under Section 438 Cr.P.C., praying to enlarge the petitioners on bail in the event of their arrest in Crime No.227/2017 of Mahadevapura P.S, Bengaluru City, which is registered for the offence P/U/S.3(1)(X) of SC/ST (Poa) Act, 1989 and Sec. 323, 504, 506 r/w.34 of IPC.)

1. The petitioners in both petitions apprehend their arrest by the respondent/police in Crime No.227/2017 of Mahadevapura Police station registered under Sections 323, 504, 506 read with Section 34 of IPC and under Sections 3(1)(X) of SC/ST (Prevention of Atrocities) Act (for brevity 'the Act' hereinafter).

2. The petitioner in Criminal Misc.4255/2017 (Criminal Petition No.4831/2017) is a practicing advocate, representing the co-accused in a civil case pending between the mother-in-law of the Accused Nos.2 and 3 and the employer of the complainant.

3. The allegation of the complainant is, he is a Security Guard by profession working for M/s.Akruti Developers Developers. He knows that the accused persons belong to upper caste, i.e., Reddy community. On 14.05.2017, since they were attempting to barge into the property under his watch and ward, he questioned them; In turn, the 1st accused abused him in filthy language by referring to his scheduled caste and incited Accused Nos.2 and 3 to go ahead with their action. Consequently, they kicked on his private part, caught hold of his collar, spit on his face, stamped on him with left leg with shoes, snatched his mobile phone and dragged him to the road. The 1st accused and three others inflicted blows on him, threw him on the road, threatened him with dire consequences if he is seen there etc. However, he was rescued by others.

4. Smt.K.Nalini, Advocate for the petitioners submits that the complaint is lodged on 16.05.2017 in respect of the incident which has allegedly occurred on 14.05.2017, without explaining the delay. There is pending arbitration case, civil case, PCR case and writ petition between mother-in-law of Accused Nos.2 and 3 and the owner of Survey No.139, BBMP Khata No.319, Hoodi village, K.R.Puram Hobli, Bengaluru city, who is also the employer of the complainant. In fact it is a cooked up story only to implicate the petitioners. The 1st accused is a practicing Advocate representing the mother-in-law of Accused Nos.2 and 3 Smt.Chanchala Devi.H.K and there is no scope for these petitioners to know about the caste of the complainant and for him to know their caste. The way the complaint is drafted by itself indicates that it is the hand work of a trained mind to wreak vengeance or to settle the score between the employer of the complainant and the Accused Nos.2 and 3. Further more, the complaint is lodged on 16.05.2017 subsequent to amendment of SC/ST (Prevention of Atrocities) Act. Still Investigating Officer quotes 'Sub- section (X)' which is not to be found in the amended Act. Since the complaint does not disclose a prima facie case under the Act, Section 18 of the Act is not attracted to the case of the petitioner to seek anticipatory bail.

5. Sri.Chetan Desai, learned Govt. Pleader, while opposing the petition, submits that it is immaterial that the I.O has put a wrong provision in the F.I.R. The fact to be adverted at the time of considering the petition under Section 438 of the Act is, whether or not a prima facie case under the Act is made out. There is clear

averment in the complaint that the accused not only intentionally insulted and intimidated the complainant with an intention to humiliate him since he belongs to the scheduled caste, they also exhibited overt act and used criminal force on him. Along with the complaint, the caste certificate of the complainant is also annexed and the petitioners do not dispute the fact that they are the members of the upper caste and the complainant is a member of scheduled caste. Therefore, Section 18 of the Act is a bar to seek relief under Section 438 of Cr.P.C.

6. In the light of the above submissions, I have perused the complaint allegations.

7. As of now, there is no material on record to show that the complainant has taken treatment for the alleged injuries caused to him during the incident and the prosecution does not dispute the submission of the petitioners that the complaint is the culmination of the ensuing enmity between the employer of the complainant and the family of Accused Nos.2 and 3 over property dispute. Going through the complaint allegation, the complainant was engaged to work at this spot on 14.05.2017 and the incident occurred on the very same day. It is beyond comprehension that he will know the caste of the assailants or vice versa. The complaint strongly suggests the author is making effort to fix the case within the brackets of the Act. In VILAS PANDURANG PAWAR AND ANOTHER v/s. STATE OF MAHARASHTRA AND OTHERS (2012) 8 SUPREME COURT CASES 795), the Apex Court has stressed on the obligation of the Court to see whether a prima facie case under the Act is made out while dealing the petition for anticipatory bail under the Act. The complaint strongly signals that it is the culmination of the previous transactions/vendetta between the accused persons and the employer of the complainant, hence, at this stage, it cannot be said that a prima facie case under 'the Act' is made out against the petitioners. In that view of the matter, Section 18 of 'the Act' cannot be a bar for the petitioners to seek a relief under Section 438 of the Act.

8. Hence, the petitions are allowed. Petitioners in both the petitions are granted anticipatory bail in Crime No.227/2017 of Mahadevapura Police station registered under Sections 323, 504, 506 read with Section 34 of IPC and under Sections 3(1)(X) of SC/ST (Prevention of Atrocities) Act registered by the respondent/police

for a period of three weeks. Within the above period, they shall surrender before the concerned Court and move for regular bail. Till disposal of their bail petition, this order shall be in force. In the event of their arrest, they shall execute a self-bond for a sum of Rs.1,00,000/- each with one surety each for the like sum.

In view of the disposal of the main petitions, I.A.I/17 in both the petitions stand disposed of.

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