

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

Criminal Application No. 1860 Of 2015.

GOVIND TRIMBAK KARHALE.
VERSUS
THE STATE Of MAHARASHTRA.

Appearance =>

Mr. Anil M. Gaikwad, Advocate for the Applicant.

Mrs. Pratibha Bharad, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 17th April, 2015.

Per Court :-

Present Criminal Application is filed by the applicant for grant of anticipatory bail, since he is apprehending his arrest in connection with CR No.25/2015 registered with Police Station, Palam, District – Parbhani for the offences punishable under Section.s. 337, 323, 504, 506 read with 34 of the Indian Penal Code and under Section/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

[2] Heard Mr. Anil M. Gaikwad, learned counsel for the Applicant and Mrs. Pratibha Bharad, learned Additional Public Prosecutor for the State.

[3] The first information report is lodged by Srikant Malhari Asale. It is lodged on 25th February, 2015. The matter is reported at Police Station at 20.30 hrs. The First Information Report shows that, on 25th February,

2015 at 7.30 a.m. when the first informant had been to the public well for fetching the water that time, the applicant has pushed him and uttered abusive words in the name of caste. He has further stated that he was assaulted by other co-accused persons and that time, his relative Jankiram Vitthal Asle and Bharat Udaji Asale came there.

[4] On the basis of the said report, Crime is registered against the applicant and other co-accused. The learned trial court has already released the other co-accused persons since the abusive words in the name of caste were not attributed to them.

[5] I have perused the statement of Jankiram Vitthal Asle and Bharat Udaji Asale, which are placed on record.

[6] The learned counsel for the applicant has pressed into service reported decision of this court in case of **Mahesh Sakharam Patole & Ors. Versus The State of Maharashtra, reported in 2009(2) Bombay C.R. (Cri.), 867.** Paragraph Nos. 6 and 7 are reproduced here-in-below :-

“In the present case, it is alleged that the complainant was insulted/intimidated by applicant Nos. 1 to 3, by calling him a Mhardya at 3.30 am, when he was in the house and also after he came out of the house and was in the courtyard. As stated by him in the FIR, his family members and his resident servant were present when the incident occurred. The complainant has not stated that besides these persons any other member of the public was either present or heard the remarks. Therefore, the question was raised whether, in the facts of the present case, the provisions of Section 3(1)(x) of the Act are attracted.”

“ A mere presence of the family members, including resident servant, in my opinion, is not sufficient to constitute an offence under section 3(1)(x) of the Act. Family members or resident-servant cannot be treated as members of public, even if the incident was not visible, at least the utterances or remarks should be audible to the members of public to constitute an offence under the Act. For instance, if the complainant was insulted/intimidated in a closed cabin, and if the remarks were clearly audible outside the cabin and if they were heard by the public, that would also constitute an offence under section 3(1)(x) of the Act. Similarly, if no member of public was present when the accused uttered the abuses at a public place, it would not constitute an offence. Therefore, to constitute an offence under section 3(1)(x) of the Act, the incident should occur in the presence of the public or at least the utterances should be audible to the member/s of public.”

[7] From the F.I.R. itself it is clear that Jankiram Vitthal Asle and Bharat Udaji Asale are the relatives of first informant. The F.I.R. does not disclose that except these two relatives, other members of the public were present there.

[8] In that view of the matter and in view of the reported decision cited supra, the applicant has made out prima facie case. Hence, I pass the following order :-

ORDER

(i) Application is allowed.

(ii) In the event of arrest, Applicant - GOVIND TRIMBAK KARHALE shall be released on anticipatory bail on he executing P.R. Bond of Rs. 5,000/- [Rs. Five Thousand.] with one solvent surety in the like amount, in connection with CR No. 25/2015 registered with Police Station, Palam, District – Parbhani for the offences punishable under Section.s. 337, 323, 504, 506 read with 34 of the Indian Penal Code and under Section/s 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(iii) With this Criminal Application is allowed and same is disposed of accordingly.

(V.M. DESHPANDE, J.)