

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.5184 OF 2015

Dr, Bhalchandra s/o Raghunath
Suryawanshi, Age 61 years,
Occu. Service, Principal,
Shri Renuka Devi Arts, Commerce
and Science College, Mahur,
Taluka Mahur, District Nanded

..Applicant

Versus

1. The State of Maharashtra,
through the District Superintendent
of Police, District Nanded
2. Police Station, Mahur,
through its Sub Divisional Police
Officer, Mahur, Charge Bhokar,
District Nanded

..Respondents

Mr G.N. Chincholkar, Advocate for applicant
Mr S.N. Moranpalle, A.P.P. for respondents
Mr P.B. Rakhunde, Advocate assisting the A.P.P.

CORAM : N.W. SAMBRE, J.

DATE : 12th October 2015

PER COURT

1. Heard learned Counsel for the applicant and learned Additional Public Prosecutor for respondents.
2. The applicant is booked for offence punishable under Section 354-A (2) read with Section 34 of the Indian Penal Code and under Section 3 (1) (ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST Act') in Crime No.42/2015 registered with Mahur Police Station, District Nanded.

3. The complainant-victim was working as a Head Clerk in Shri Renuka Devi Arts, Commerce and Science College, Mahur, of which the applicant herein was Principal who has taken over charge on 22nd January 2015. The management/society to administer the said college was headed by one Prafulla Prakash Rathod.

4. Learned Counsel for the applicant would urge that the complainant has implicated the applicant in a false crime referred above. He would urge that the record depicts that the conduct of the complainant during her tenure as a Head Clerk with the College, of which the applicant was Principal was not satisfactory. According to him, there was some dispute as regards reimbursement of medical bill of the complainant. Apart from above, he has invited attention of this Court to certain shortfalls noticed in the duty period of the complainant and as such, according to him, the applicant was falsely implicated in the crime in question. He would further urge that the President of the society namely Prafulla Prakash Rathod was already arrested and released on regular bail.

5. According to learned Counsel for the applicant, the reading of the contents of the first information report would depict that the provisions of SC/ST Act are not attracted in the case in question and so as to substantiate his contention, has relied upon the judgment of Apex Court in the matter of **Vilas Pandurang Pawar & Anr., Vs. State of Maharashtra & Ors.**, reported in **2012 (4) Bom.C.R. (Cri) 408.**

6. While opposing the bail application, learned A.P.P. would urge that from the investigation papers and the contents of first information report, it is clear that the applicant was within the knowledge about caste of the complainant and the fact that the complainant was harassed she being a lady belonging to Scheduled Caste category is apparent. In support of his contention, he has relied on the statements of brother and husband of the complainant.

7. Learned Counsel for the complainant, with an intention to assist the prosecution, has invited attention of this Court to the provisions of Section 18 of the Act of 1989 so as to canvass that the application under Section 438 of Cr.P.C. for granting anticipatory bail is not tenable in view of statutory bar. In support of his contention, he has placed reliance upon the judgments of Apex Court in the matter of **Shakuntala Devi Vs. Baljinder Singh 2013 (3) Bom. C.R. (Cri.) 184** and in the matter of **Vilas Pandurang Pawar & anr. Vs. State of Maharashtra & Ors.**, reported in **2012 (4) Bom. C.R. (Cri.) 408.**

8. Learned Counsel for the complainant would further urge that there is strong prima facie case against the present applicant and the applicant ought not to have approached straight way to this Court and should have approached the Sessions Court for grant of pre-arrest bail in case the provisions of the SC/ST Act are not attracted.

9. Upon considering the rival submissions of the parties, it is not in dispute that the applicant has taken charge of Principal from 22nd January 2015.

10. From the record, it depicts that the another accused, President of the society namely Prafulla Prakash Rathod was already arrested and released on bail in the present case. The allegations against the applicant are that he acted on behalf of said Prafulla Prakash Rathod, the President of the Society. Apart from above, it is required to be taken note of the fact that the record depicts differences between the applicant and the complainant on the aspect of reimbursement of her medical bill, so also the past record depicts the insubordinate conduct of the complainant while working in the institution.

11. Leave apart above considerations, perusal of the first information report prima facie reflects that the applicant is booked for an offence punishable under Section 13 (1) (ii) of the SC/ST Act. Perusal of the said provision reflects that prima facie, upon reading of the contents of the first information report, the applicant cannot be considered to have committed offence punishable under the said provision. In view thereof, it will be appropriate to rely upon the judgment of Apex Court in the matter of Vilas Pandurang Pawar and anr. Vs. State of Maharashtra (cited supra) wherein the Apex Court in paragraphs 8 and 9 has observed thus :

“8. Section 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 persons 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.”

Similar observations of the Apex Court in the matter of Shakuntala Devi Vs. Baljinder Singh (cited supra) in paragraph 4 of the said judgment are required to be taken note of, which read thus :

“4. We find that section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1984 provides that nothing in section 438 of the Criminal Procedure 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. This Court has also held in (Vilas Pandurang Pawar & Anr., Vs. State of Maharashtra & ors.) 2, reported in 2012 (4) Bom. C.R. (Cri.) 408 (S.C.) : 2012 (8) SCALE 577 that section 18 of the Act creates a specific bar to the grant of anticipatory bail to a person against whom any offence is registered under the provisions of the aforesaid Act and, therefore, no Court shall entertain an application for anticipatory bail unless it, prima facie, finds that an offence under the Act is not made out.”

12. Having regard to the above considerations, it will be appropriate, in my opinion to grant protection to the present applicant, he being working as a Principal in educational institution. Hence, I propose to pass the following order :

13. In the event of arrest of the applicant, in connection with C.R. No.42 of 2015, registered with Police Station, Mahur, Taluka Mahur, District Nanded, for offences punishable under Section 354-A (2) read with sec. 34 of the Indian Penal Code and under Section 3 (1) (ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, he be released on bail, on furnishing P.R. bond of Rs.10,000/- with one surety in the like amount.

14. The applicant shall attend the Police Station for three days between 10.00 a.m. and 11.00 a.m. and thereafter as and when called by the investigating Officer. The applicant shall keep himself away from the jurisdiction of concerned Police Station till filing of charge-sheet, but for the present proceedings.

15. Criminal Application stands allowed in above terms.

16. It is clarified that the observations made herein above are prima facie and the Sessions Court while dealing with the trial shall not get influenced.

(N.W. SAMBRE, J.)

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