

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1048 OF 2015

Babasaheb Vitthal Chavan

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.P.G. Sarda for the Applicant

Mr.S.S. Pednekar APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JULY 24, 2015**

P.C.:

1. This is an application for pre-arrest bail as the applicant/accused is apprehending arrest in C.R. No.158 of 2015 registered with Jath police station, Dist. Sangli for the offences punishable under sections 3(1)(ii) and 3(1)(xii) of the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 and under section 7(1)(3) of the Protection of Civil Rights Act and also under section 494 of the Indian Penal Code. The complaint was lodged by one Gayatri Vilas Kamble on 23.6.2015 against the applicant/accused. The case of the prosecution is that she was having an affair with him. They had physical relations. Thereafter, in January 2012, he got married with her, in one temple. She was residing with him and he had promised her that he would take her to his house after the marriage of his sisters. She became pregnant from applicant/accused. She delivered

a baby girl. Thereafter, he looked after her for a few months. Then, he got married to other girl by keeping her in dark. When she questioned him, he told her that she is from a lower scheduled caste and it was not possible for him to treat her as his wife. Then, there was a meeting which was held in June, 2015 in the village. At that time, the applicant/accused said publicly that the complainant belonged to the scheduled caste and, therefore, people in his community will criticize him. Hence, the offence was registered against him.

2. The learned Counsel for the applicant/accused has submitted that no offence was committed publicly. Whatever communication was there, it was between the complainant and the applicant/accused. In the meeting held on 1.6.2015, at the Gram Panchayat office, as per the allegations, he made reference to her caste. The learned counsel submitted that in fact the meeting was concluded and the persons who were present had signed the minutes of the meeting. However, subsequently, the contents in respect of addressing the complainant by her caste, were mentioned at the instance of the marriage counsellor. Under such circumstances, he is to be granted bail.

3. Learned Prosecutor opposed the application. He submitted that there is a bar under section 18 of the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 and hence, it is to be rejected.

4. Perused the FIR and the documents produced by the applicant/accused. It appears from the FIR that the complainant and the applicant/accused were having an affair. She belonged to a scheduled caste and the applicant/accused is from higher caste. Out of their relationship, nearly 10 to 12 months prior to the date of the FIR, a baby girl was born. As per the allegations made by the complainant, she asked the applicant/accused as to why he was not ready to take her to his house and was not treating her as his wife. At that time, he told her that she belonged to scheduled caste and, therefore, it was not possible for him to take her to his house. On a plain reading, it is obvious that this incident has taken place between the two of them and not in public and, therefore, no offence under section 3(1)(x) and the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 is committed. However, she has further narrated that a meeting was conducted on 1.6.2015 in the Gram Panchayat and at that time, the subject of matrimonial relations between the complainant and the applicant/accused and the future of their daughter was discussed before the members of the Gram Panchayat. Accordingly, in the minutes of the meeting, it was mentioned and the members have signed below, however, there is a footnote subsequently recorded that in the meeting, where the applicant/accused has referred the complainant by her caste as she belonged to lower caste so he would not marry her. The submissions of the learned Counsel that this footnote was inserted

subsequently and, therefore, no offence has taken place, cannot be accepted at this stage. The footnote might have been entered subsequently. *Prima facie*, it shows the applicant/accused was in relation with the complainant and it appears that they were having live-in relationship or a customary marriage was performed and the girl child was born out of this relationship. Under such circumstances, addressing the woman publicly that it was not possible for him to treat her as his wife only because she belonged to a lower caste, is an intentional humiliation amounting to an offence under section 3(x) and 3(1)(xii) of the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. Hence, bar under section 18 of the the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 cannot be lifted and application cannot be entertained under section 438 of the Criminal Procedure Code.

5. Hence, Anticipatory Bail Application is rejection.

(MRS.MRIDULA BHATKAR, J.)