

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.248 OF 2015
WITH
CRIMINAL APPLICATION NO.191 OF 2015
IN
ANTICIPATORY BAIL APPLICATION NO.248 OF 2015**

Mr.Shripal Rajendra Shah & ors.	... Applicants
Vs.	
The State of Maharashtra	... Respondent
And	
Prabhakar M. Waghmare	... Complainant

Mr.P.M. Patil for the Applicants
Mr.Arfa Sait, APP, for Respondent – State
Mr.Nitin Satpute for Complainant/Intervener in APPP/191/2015

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

DATE: **APRIL 8, 2015**

P.C.:

1. The application is moved for pre-arrest bail by this applicants/accused as they are prosecuted under sections 448, 427 of the Indian Penal Code and under section 3(1)(v) and (x) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. Sections 448 and 427 of the Indian Penal Code are bailable and the offences committed under the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 are non-bailable and hence this application under section 438 of the Criminal Procedure Code.

2. It is the case of the informant that he is a builder and he has purchased a property at Kondhwa, District Pune. There was a dispute between him and the applicants/accused. The applicants also claimed that the said property and on 12.12.2014 at around in the morning, he got information on his cellphone that his office and his shop of stationery and bangles were demolished by the applicants/accused. Hence, he gave the complaint to the police on 12.12.2014. However, thereafter, he gave supplementary statement on 20.1.2015 in which he has stated that when the applicant/accused No.1 Shripal Rajendra Shah quarelled with the complainant's wife and the daughter in law. At that time, he threatened them on 8.12.2014 and he wanted to dispossess his wife and daughter in law and when the complainant arrived on the spot, the applicant/accused No.1 addressed him by his caste and uttered derogatory words. Accordingly, his supplementary statement was recorded and the offence was registered under the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. Another supplementary statement was recorded on 26.1.2015 wherein he has stated that at the time of recording his first FIR on 12.12.2014, the police officer Mr.V.B. Kasar did not record the same properly and he tried to put pressure on him and tried to save the applicants/accused. Therefore, for last one month, he was continuously pursuing the matter on a highest level and then, on 16.1.2015 and thus, his supplementary statement was recorded.

3. The learned Counsel for the applicants/accused has submitted that the applicants/accused have never uttered such words. They are innocent and therefore they be granted pre-arrest bail.

4. The learned prosecutor and the learned Counsel appearing for the complainant have opposed the application. The learned Counsel for the complainant submitted that the complainant has made the complaint to the higher police authorities to get justice and accordingly, the charges under the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 were added against the applicants/accused subsequently.

5. Perused the FIR, the supplementary statements. There is a bar under section 18 of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 to entertain any application under section 438 of the Criminal Procedure Code. However, before invoking the bar, it is necessary for the Court to see whether the offence under the relevant sections prima facie is committed or not. Considering the time sequence as the incident has taken place on 12.12.2014 and the supplementary statement which was recorded on 16.1.2015 and thereafter on 26.1.2015 and then the utterances were added, prima facie, I am of the view that the bar under section 18 will not come in the way to take recourse under section 438 of the Criminal Procedure Code.

6. In view of the above, I grant pre-arrest bail to the applicants/accused on the following conditions:

- i) In the event of arrest, the applicants/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.15,000/- each, with one or two sureties in the like amount;
- ii) The applicants shall not tamper with the evidence;
- iii) The applicants shall not indulge into any kind of offence and especially as alleged in the present FIR, while on bail;
- iv) The applicants shall cooperate with the Investigating Officer and attend the concerned police station as and when called, till the filing of chargesheet.

7. Anticipatory Bail Application is disposed of accordingly.

8. Intervention application also stands disposed of.

(MRS.MRIDULA BHATKAR, J.)