

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 435 OF 2015

Jayram Sampat Nahane	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Prashant S. Hagare, Advocate for the applicant.

Mr. Arfan Sait, APP for the State.

I.O. Mr. M.B. Deshmukh, P.S.I., Bhigvan Police Station, Pune (Rural) present.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 25th March, 2015.

P.C.

This Application is moved for anticipatory bail, as the applicant/accused is facing charges under sections 354A, 323 of the Indian Penal Code and section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which is registered at C.R. No. 11 of 2015 with Bhigvan Police Station, Pune.

2. It is the case of the complainant that on 28th January, 2015 at night when she was travelling on the motorcycle alongwith her husband, they stopped near one petrol pump to fill the petrol in motorcycle. Her husband was at the petrol pump and she was standing little away from the petrol pump. As she was standing alone, the applicant/accused along with co-accused arrived there at the motorcycle and he offered a lift to

her. The applicant/accused belonged to Maratha community and the complainant belonged to Mathang community. At that time, she told that she is with her husband. Ignoring this, he tried to hold her hand but immediately she tried to contact her husband on cell phone, therefore, both of them went away. As soon as her husband arrived there, she narrated this incident and so they both followed the applicant/accused. The applicant/accused along with co-accused were sitting in a hotel and when the complainant's husband questioned both of them about the misbehaviour, the applicant/accused and co-accused assaulted him with kicks and fist blows. Hence, she lodged the complaint.

3. The learned counsel for the applicant/accused has submitted that the co-accused is released on bail. The applicant/accused was not aware that the complainant belonged to scheduled caste and the offence under the Scheduled Castes and Scheduled Tribes Act is a non-bailable offence and therefore, he submitted that the bar under section 18 of the Scheduled Castes and Scheduled Tribes Act shall not come to allow this Application.

4. Learned APP opposed the Application. He submitted that the complainant belonged to Scheduled Caste and there is an evidence of outraging the modesty of the complainant and use of force has taken

place, therefore, section 438 of the Cr. P.C. cannot be invoked. The incident shows that the applicant/accused along with co-accused have tried to outrage the modesty of the complainant and also *prima facie* it shows that both the accused have assaulted her husband though they were at fault. However, sections 354A and 323 are bailable. The Application under section 438 is made, as non-bailable offence under section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes Act is charged. No application can be entertained under section 438 of the Cr. P.C. , if the said offence is made out under the Scheduled Castes and Scheduled Tribes Act.

5. On perusal of the FIR, nowhere it is mentioned that the accused had knowledge that the complainant belonged to Mathang community or the Scheduled Castes. Considering this, bar under section 18 will not come to grant pre-arrest bail. Hence, I am inclined to grant pre-arrest bail to the applicant/accused on the following terms and conditions:

ORDER

i) In the event of arrest, the applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount;

ii) The applicant shall not tamper with the evidence;

- iii) The applicant shall not indulge into any kind of offence while on bail;
 - iv) The applicant shall not pressurize the complainant or her husband or any other witnesses.
 - v) The applicant shall cooperate with the Investigating Officer and attend the concerned police station on every Monday between 4 p.m. to 6 p.m. till the filing of the charge sheet.
 - vi) If the applicant/accused indulges into any criminal activity, the prosecution is free to file an application for cancellation of anticipatory bail.
6. The Application stands disposed of on above terms.

(MRS. MRIDULA BHATKAR, J.)