

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO. 791 OF 2015
WITH
CRIMINAL APPLICATION NO. 466 OF 2015 IN ABA NO. 791 OF 2015**

1. Vilas Devraj Bhangre	
2. Anil Vilas Bhangre	... Applicants
Vs.	
The State of Maharashtra	... Respondent
And	
Hanumant Vitthal Mane	... Applicant/Intervener

Mr. K.S. Patil i/b. Mr. Prashant S. Hagare, Advocate for the applicants.

Mrs. R.V. Newton, APP for the respondent/State.

Mr. Sayaji Dadu Nangre a/w. Mr. Ranjeet M. Pawar and Mr. Suraj D. Nangre, Advocate for the applicant/intervener.

CORAM	:	MRS.MRIDULA BHATKAR, J.
RESERVED ON	:	JULY 3, 2015
PRONOUNCED ON	:	JULY 22, 2015.

ORDER:

Criminal Application No. 466 of 2015 filed by the original complainant for intervener is allowed.

2. Criminal Application No. 791 of 2015 is moved for pre-arrest bail, as the applicants/accused are facing charges under section 324, 323, 504, 506 r/w. 34 of the Indian Penal Code, under section 3(1)(10) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1999 and under section 7(1)(d) of Protection of Civil Rights Act. One Hanumant Vitthal Mane gave information to the police on 16th May, 2015, pursuant to which, an offence was registered at C.R. No. 69 of 2015 of

Walchandnagar Police Station, Indapur, District Pune.

3. It is the case of the prosecution that the complainant belonged to Kaikadi community and the accused knew the family of the complainant very well. On 16th May, 2015, he received information that there was quarrel between his brother Yeshwant Mane and applicant no. 1 Vilas Devraj in respect of accounts of Gram Panchayat. He, therefore, went to Gram Panchayat and started talking with applicant no. 1, at that time, applicant no. 1 abused the complainant and his brother by their caste. Applicant no. 2 Anil Bhange, who is the son of applicant no. 1 Vilas, arrived there with iron pipe. Both the applicants/accused pushed the complainant. Yeshwant, brother of complainant, was assaulted by the applicant no. 2 with iron pipe. The complainant and his brother were sent to Primary Health Centre and thereafter Yeshwant was admitted in Private Hospital. Hence, the complainant has lodged complaint against both the applicants/accused.

4. The learned counsel for the applicants/accused has submitted that the applicants/accused have not committed any offence. They are falsely implicated in this case. There is no serious injury on the person of either Yeshwant or complainant. The main contention raised by the learned counsel for the applicants/accused is that there is no offence under the Scheduled Castes and Scheduled Tribes Act. The complainant belongs to Kaikadi Community, which comes under the category of Scheduled Castes

at sr. no. 28 of the list, in Vidarbha area excluding Rajura Taluka in Vidarbha and Kaikadi is not considered as Scheduled Castes or Scheduled Tribe in Western Maharashtra. The offence has taken place in District Pune wherein Kaikadi does not come under the Scheduled Castes and Scheduled Tribes. He pointed out that Kaikadi is included at Sr. No. 4 of Vimukta Jati in Western Maharashtra and Marathwada region. He submitted that the caste which are enlisted at Vimukta Jati are excluded from Scheduled Castes and Scheduled Tribes Act. As the complainant belonged to Kaikadi community, Scheduled Castes and Scheduled Tribes Act is not applicable to Kaikadi Community in Western Region and Marathwada region of Maharashtra. He submitted that though the complainant is relying on the certificate of Scheduled Caste Community which he has obtained from Vidarbha Region, he has obtained it fraudulently by purchasing a small piece of land few years back and got himself declared that he originates from Vidarbha region, therefore, he is Scheduled Caste Kaikadi from Vidarbha Region and trying to get the benefit of policy of the State in respect of migrated persons from Scheduled Castes and Scheduled Tribes. If that certificate is obtained by fraud, then he is not originally from Vidarbha region and hence, he is not entitled to get the benefit of the migration. The offence under Scheduled Castes and Scheduled Tribes Act is technical and therefore, no offence is committed by the applicants/accused. He relied on Clauses 24 and 25 of Article 366 of the Constitution. So also he relied on Articles 341 and 342

on the point of definition of Scheduled Castes and Scheduled Tribes Act.

5. Learned APP and learned counsel for the intervener opposed the Application for pre-arrest bail. It was submitted that due to assault, complainant's brother Yeshwant had suffered 100% loss of hearing on right ear and in left ear there is moderate conduction loss. Hence, it is a case of grievous hurt under section 326 and pre-arrest bail is not to be granted. The main ground of opposing the Anticipatory Bail application is that there is a bar under section 18 of Scheduled Castes and Scheduled Tribes Act to entertain any application under section 438 of the Cr. P.C. In the present case, the offence is made out under section 3(1)(10) of the Scheduled Castes and Scheduled Tribes Act, hence no anticipatory bail is to be granted.

6. The learned counsel Mr. Nangre for the intervener has made elaborate submissions on this issue. He submitted that applicant no. 1 Vilas has insulted the complainant and his brother Yeshwant by abusing by their caste Kaikadi. He submitted that the incident has taken place in the public place. He argued that the submissions made by the learned counsel for the applicants/accused that Kaikadi is not a caste covered under Scheduled Castes and Scheduled Tribes are incorrect. He argued that though Kaikadi caste is not listed under the Scheduled Castes and Scheduled Tribes in District Pune and it is listed in Vimukta Jati category, Kaikadi from Nagpur are covered under Scheduled Castes in Vidarbha

region. The applicants/accused has migrated from Chikali at Buldana to Taluka Indapur, District Pune. A caste validity certificate was issued in his favour. The complainant and his brother are entitled to benefits of reservation due to migration policy adopted by the Central. He pointed out that rule of area restriction of caste was lifted after 1976 and therefore, even though a person belonging to Scheduled Caste is migrated to other region, he has to be treated as Scheduled Caste. He relied on the definition under Article 366. He also relied on the Constitution (Scheduled Castes) Order, 1950 and on the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976.

7. It appears from the FIR, documents on record and injury certificate that the incident of assault has taken place on the date mentioned in the FIR. The medical certificate dated 16th May, 2013 of Yeshwant though shows complete sensory neural loss of right ear and of left ear moderate conduction loss, but that certificate is given by Private Hospital. Medico Legal Certificate given by Primary Health Centre has not giving its finding but it has issued certificate based on the observation and examination which is conducted in the private hospital.

8. So far as the issue of caste is concerned, it is undisputed that caste Kaikadi in Vidarbha region comes under Scheduled Castes. However, it is not covered under Scheduled Castes and Scheduled Tribes in Pune District or Western Maharashtra but it falls under the category of Vimukta

Jati. Article 341 defines Scheduled Castes and Article 342 defines Scheduled Tribes. Vimukta Jati is a different category which is not covered under Scheduled Castes and Scheduled Tribes Act. Under section 2(c) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1999, scheduled castes and scheduled tribes are defined. For the purpose of definition, the Act borrows the definition from Clauses 24 and 25 of Article 366 of the Constitution, which again refer to Article 341 and 342 for understanding the definition of Scheduled Castes and Scheduled Tribes. Under Articles 341 and 342, a scheduled caste or scheduled tribe is required to be notified by the Parliament or the Legislature. Though other Tribes or Vimukta Jati are listed, but they are separate categories and listed, they are neither Scheduled Castes nor Scheduled Tribes under Articles 341 and 342 of the Constitution. On number of times, while dealing with the caste reservation, the High Courts and Supreme Court had an occasion to deal with the issue of migration of the persons belonging to Scheduled Castes and Scheduled Tribes and the application of reservation due to migration. As per the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, after 1976, the Central Government has lifted the area restriction. Thereafter, a person originally belonging to a scheduled caste or a scheduled tribe, if shifts to other place where his caste is not scheduled, he is entitled to the benefits which he was getting prior to migration. The learned counsel Mr. Patil relied on the judgment of Division Bench of this Court in the case of

Maharashtra Rajya Pareet (Dhobi) Sewa Mandal vs. State of Maharashtra, reported in (1997) AIR (Bom) 67. The Division Bench of this Court has held that the President has been expressly authorized to limit the notification to parts of or groups within the castes, races or tribes. The President can specify caste, race or tribe or parts thereof in relation to parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification. The Court is devoid of power to include in or exclude from the substitute or declare synonyms to be of a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe.

9. Thus, the ratio laid down by the Division bench of this Court gives a guiding line that if a particular caste is not notified as a Scheduled Caste or Scheduled Tribe, it cannot be brought by the Court within the said ambit. In the present case, due to lifting of area restrictions whether the benefits of reservation which are granted to the migrants can be made applicable in the criminal case under Scheduled Castes and Scheduled Tribes Act or not is a debatable issue. As Kaikadi is notified as Vimukta Jati in Pune region, Scheduled Castes and Scheduled Act is not applicable to Kaikadi community. However, by virtue of lifting of area restriction, it can be said to be covered under Scheduled Castes or not is a debatable issue and is to be decided at the time of final hearing. However, *prima facie* it is a arguable case and therefore, bar under

section 18 of Scheduled Castes and Scheduled Tribes Act at this stage can be lifted. In view of this, I am inclined to grant pre-arrest bail to the applicants/accused on the following terms and conditions:

ORDER

- i) Application is allowed.
- ii) In the event of arrest, the applicants/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.20,000/- each with one or two sureties in the like amount;
- iii) The applicants shall not tamper with the evidence and shall not pressurize the complainant and his relatives;
- iv) The applicants shall not indulge into similar type of offence, while on bail;
- v) The applicants shall attend the concerned police station on every Friday between 4 p.m. to 5 p.m.;
- vi) Violation of any of above conditions shall amount to cancellation of pre-arrest bail.

10. Anticipatory Bail Application stands disposed of.

(MRS.MRIDULA BHATKAR, J.)