

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.912 OF 2015

Kum. Pallavi Ashok Palande and Another ... Applicants

vs.

The State of Maharashtra ... Respondent

Mr. Ashok Tajane a/w. Mr. Harshad Garud, for the Applicants.
Mr. Arfan Sait, APP for Respondent – State.

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

DATE: **JULY 02, 2015**

P.C.:

. The application is moved for pre arrest bail as the applicants/accused are facing charges for the offences punishable under Sections 323 and 504 of the Indian Penal Code and under Section 3(1)(X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (“SC/ST Act”) and Section 7(1)(d) of the Protection of Civil Rights Act in C.R. No. 3056 of 2015 registered with Vimantal police station, Pune.

2. It is the case of the prosecution that one Ashwini Bhoite who belong to the SC/ST caste gave information to police on 23rd June, 2015. Pursuant to which first information report is registered at C.R. No. 3056 of 2015 with Vimantal police station, Pune. It is the case of the complainant that she is working as a 'sweeper' in Sanjay Park Society and her husband is working as a 'security guard'. It is her case that, the applicant/accused No. 1 used to abuse her and used to pick up petty quarrels with her. On 23rd February, 2015 in the morning when she was cleaning the compound, applicant/accused No. 1 abused her by her caste and assaulted her publically in presence of the witnesses. Hence, the offence was registered.

3. The learned counsel for the applicants/accused has submitted that, there are no charges under SC/ST Act or even Sections 323 and 504 of the Indian Penal Code against applicant No. 2. He further submitted that there was earlier, the applicant/accused No. 1 had given report to police on 28th April, 2015 which was registered at C.R. No. 3038 of 2015 with Vimantal police station, Pune under Section 429 of the Indian Penal Code and Section 11(1)(A)(B) and 11(1)(L) of the Prevention of Cruelty to Animals Act,

1960 and Section 119 of the Mumbai Police Act. The father of the applicant/accused who is working as a watchman in the society, he chased a stray dog and hit him with a wooden log and a left eye of that dog was injured. It is submitted that because of the previous complaint given by her, against the watchman i.e. husband of the complainant, she has given this complaint out of revenge.

4. The learned counsel for the applicant/accused has submitted that the investigating officer does not have power to investigate. He further argued that investigation is not carried out as per the procedure under the SC/ST Act as it is to be investigated by the officer not below the rank of Dy. Superintendent of Police. The learned prosecutor has submitted that this case is investigated by the Assistant Commissioner of Police having equivalent rank of Dy. Superintendent of Police.

5. The learned prosecutor opposed the application. He relied on the first information report of Ashiwini Bhoite and the statements of other witnesses who witnessed the incident and other documents. He submitted that the incident has taken place in a public place in

presence of people. Hence, the offence is made out under SC/ST Act and therefore, pre arrest bail be granted.

6. Perused the previous complaint given by the applicant/accused No. 1 against the father of the complainant. Perused the first information report and the statements of witnesses. It appears *prima facie* that the complaint given by the present complainant cannot be said *prima facie* false or manipulated. The statement discloses that a specific utterance and abuse by caste by accused No. 1 was made. Under these circumstances, bar under Section 18 of the SC/ST comes into force and no order under Section 438 of Code of Criminal Procedure can be granted for the offence under the SC/ST Act.

7. Hence, application for pre arrest bail of the applicant No. 1 is rejected.

8. There are no allegations against applicant/accused No. 2 in respect of abusing the complainant by her caste, therefore bar can be under Section 8 of the SC/ST Act can be lifted. Hence, pre arrest bail is granted to applicant/accused No. 2.

9. Hence, I pass the following order:

a) The application for pre arrest bail in respect of applicant/accused No. 1 is rejected.

b) In the event of arrest, the applicant/accused No. 2 be enlarged on bail on furnishing P. R. Bond in the sum of Rs. 20,000/- (Twenty Thousand) with one or two solvent surety/s in the like amount;

c) The applicant/accused No. 2 shall cooperate with the investigating officer and shall attend concerned police station twice on 7th and 14th July, 2015 in between 11 am to 12 noon.

d) He shall not to indulge in any criminal activity and quarrel with the complainant, her family members and other witnesses.

10. Anticipatory bail application stands disposed of on the above terms.

(MRS.MRIDULA BHATKAR, J.)