

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1156 OF 2015

Smt. Jaya @ Shiba Peter. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1155 OF 2015

Mr. Motiram Undrya Patil. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Niranjana Mundargi i/b. Mr. Ranjit Babusing Ade, advocate for
Applicant in ABA1156/15.

Mr. Niranjana Mundargi i/b. Mr. V.R. Patil, advocate for Applicant in
ABA1155/15.

Mr. S.H. Yadav, APP for State.

Mr. Kargutkar, API, Kasarvadavli Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 10, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the Learned
APP for State. Perused the papers.

2 These are the applications under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 47 of 2015 registered at Kasarvadawali Police Station for offence punishable under Section 3(1)(x) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities Act), 1989.

3 It is the case of the prosecution that on 13/7/2015 the complainant Shri Kashinath Bhanji Bhagat lodged a report at the police station alleging therein that his wife is suffering from diabetics. She had various other ailments. She is taking treatment in Shriram Hospital from Dr. Shreeja Patkar. On 23rd March, 2015 he had been to the hospital along with his wife. She needed immediate attention. He was waiting in the queue. After examining two patients just before it was the turn of the complainant, the Trustees of the said hospital i.e. the applicant in ABA No. 1155 of 2015 Mr. Motiram Patil had visited the doctor. He had gone into the cabin of the doctor. The nurse i.e. the applicant in ABA 1156/15 and the trustee were talking

to Dr. Shreeja Patkar. That the doctor was not giving attention to the patient in the queue and therefore, the complainant had become impatient and therefore, he had peeped into the cabin and requested the doctor to give immediate attention to his wife. At that time, the trustee of the hospital as well as the nurse had abused the complainant by referring to his caste and had said that they belong to a adivasi tribe and had no common sense. It is in these circumstances, an offence is registered against the present applicants.

4 It is clear that the incident had occurred inside the hospital. The learned APP submits that since there is bar under Section 18 of the Act, the applicants are not entitled to grant of pre-arrest bail, as section 18 carves out an embargo upon grant of pre-arrest bail.

5 The learned Counsel for the applicants rightly submits that the embargo is operative only in the circumstances that an offence is made out under the said Act. Moreover, according to the learned Counsel for the applicants, the incident has not taken place in public view, as contemplated under Section 3(1)(x) of the said Act.

6 Section 3(1)(x) of the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 contemplates as follows :

“3. Punishment for offences of atrocities.- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-.....
(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;.....”

7 The learned Counsel submits that in the present case, the incident has not occurred in the public view. The investigating Officer has recorded the statement of some of the patients who have stated that they had heard some verbal altercation between the trustee and the complainant and at that time the applicant in ABA No. 1155 of 2015 had referred to the caste of the complainant.

8 Besides this, the learned Counsel for the applicants has filed on record the resume of Dr. Gauri who happens to be the daughter of the complainant. That on 26/6/2015 Dr. Gauri had filed an application

to the said hospital seeking for an employment as a doctor in the said hospital. There was no reason for the complainant to suppress these facts. It is a matter of record that the FIR is lodged on 13/7/2015. The learned Counsel for the applicant upon instructions also submits that previously an attempt to seek an employment in the said hospital was turned down and this was the second time when the daughter of the complainant had filed an application alongwith her resume.

9 Be that as it may, in the present case, the applicants do not deserve custodial interrogation in the facts and circumstances of the case. Hence, the applicants have made out a prima facie case for grant of pre-arrest bail.

10 It is made clear that the observations made hereinabove are restricted to an application under Section 438 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by the above said observations and arrive at a conclusion only on the

basis of the substantive evidence adduced by the prosecution at the time of trial.

11 Hence, following order is passed :

ORDER

- (i) The applications are allowed.
- (ii) In the event of arrest in C.R. No. 47 of 2015, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- each with one or more sureties in the like amount.
- (iii) The applicants shall report to the investigating officer as and when called and cooperate with the investigating agency to the best of their capacity.
- (iv) The applicants shall not threaten any witness including their own staff.

12 The applications are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)