

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1192 OF 2014

1. Rukhmini Rohidas Yewale
2. Akshada Rohidas Yewale
3. Shubhada Rohidas Yewale

....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Shekhar Jagtap i/b J. Shekhar & Co. for Applicants
Mr. Gautam A. Tambe for Respondent no. 2
Mr. A. S. Shitole APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JANUARY 13, 2015

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 3136 of 2014 registered at Bharati Vidyapeeth police station for offence punishable under section 3 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2) It is the case of prosecution that complainant belongs to Scheduled

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Caste i.e. Hindu Mahar. She had filed a report to the police station on 13/07/2014, alleging therein that applicants are residing in the same building as that of complainant. That the applicants have humiliated and insulted the complainant, since they belonged to scheduled caste. It is also alleged that applicants had created obstruction in the passage from which, complainant had access to his house. It is also alleged that applicants were regularly throwing garbage in front of the house of the complainant, with an intention to force them to vacate the house and hence, applicants have committed offence under section 3 (15) of the said act as well as 3 (2) of the said act. It is specifically alleged that the applicants are indulging into such acts for the past two years. That being fed up with the humiliation, complainant is alleged to have lodged the complaint.

3) Learned counsel for the applicants has vehemently submitted that complainant is a habitual complainant and by taking advantage of the fact that they belonged to scheduled caste, complaints are lodged against residents of the same building. In the year 2006, complainant had prosecuted Amarjeetkumar Palahe, Sindhu Shah & Kusum Loniya for offence under

section 3 (1) (x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and section 7 (1) (d) of Protection of Civil Rights Act, 1955, and the same was registered as Special Case No. 14 of 2006. By Judgment and Order dated 09/05/2007, accused were acquitted in Special Case No. 14 of 2006. Learned counsel further submits that applicant no. 1 is a housewife. Applicant no. 2 is prosecuting her education in Ayurvedic branch of medicine and applicant no. 3 is prosecuting her graduation. Learned counsel submits that in the eventuality applicant nos. 2 & 3 are arrested, it would not only hamper their academic career, but would expose them to such social obloquy that it would be difficult to get them married into respectable families and therefore, prays that applicant nos. 2 & 3 be protected by grant of pre-arrest bail. It is further submitted that applicant no. 1 deserves pre-arrest bail as this is not a case of custodial interrogation as the dispute is between two neighbours.

4) Learned counsel appearing for the original complainant submits that under section 18 of the said act, there is a bar to grant protection under section 438 of Code of Criminal Procedure, 1973.

5) In a case, where recitals of the F.I.R. do not disclose specifically, an offence under the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, then bar under section 18 of the said Act would not be an impediment to consider an application under section 438 of Code of Criminal Procedure, 1973. This Court, upon perusal of the F.I.R. has observed that the dispute was between neighbours as two individual families and not only because complainant belonged to scheduled caste.

6) Learned counsel for the intervener has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Vilas Pandurang Pawar and another V/s State of Maharashtra and others** reported in 2012, Supreme Court Cases, 795, wherein Hon'ble Apex Court has held that:

“If there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail.”

7) In the present case, it is a matter of record that there is no specific

averment in the complaint by which applicants are alleged to have insulted or intimidated the complainant with reference to their caste. In fact, there is no reference to caste in the complaint. All that the complainant has alleged is that the access road is obstructed or that applicants make weird gestures at the complainant. It cannot be said that said humiliation is made in public view. This is a usual quarrel between two neighbours. Taking into consideration the fact that the applicants are females, this Court is not inclined to send them into police custody for the purpose of interrogation.

8) Learned counsel for the applicants, upon instructions, undertakes that applicants herein would not commit any breach of peace and would live happily as neighbours. Considering all the above aspects, applicants deserve grant of pre-arrest bail.

9) Observations made herein above are prima facie in nature and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
 - (ii) In the event of arrest, applicants be enlarged on bail on furnishing P. R. bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.
 - (iii) Applicants shall report to the police station as and when called
- Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)