

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1416 OF 2015

Shailendra D. Pawar ..Applicant

v/s.

The State of Maharashtra. ..Respondents

a/w.

**INTERVENTION APPLICATION NO. 851 OF 2015
in
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1416 OF 2015**

Vinod Babulal Narwala ..Applicant/Intervenor

In the matter between

Shailendra D. Pawar ..Applicant

v/s.

The State of Maharashtra. ..Respondents

Mr. Sandeep Salunkhe for the Applicant in ABA 1416-15.

Mrs. Veera Shinde, APP for the Respondent-State.

Mr. B.A.Lawate for the Intervenor applicant.

Mr.D.DYewade, PSI, Daund Police Station present.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : DECEMBER 21, 2015.**

P.C.

1. This is an application for bail filed by the applicant

apprehending his arrest in Crime No.75 of 2015 registered with Daund Police Station for the offence punishable under Section 323, 504, 506 r/w. 34 of the Indian Penal Code and under Section 3(1) (10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. The allegations against the applicant in brief are that on 19.8.2015 in between 6.15 to 6.30 hours, the applicant herein abused one Vinod Babulal Narwal with reference to his caste and also intentionally insulted him and criminally intimidated by giving threats to cause his death. Pursuant to the FIR lodged by the complainant Vinod Narwal, crime came to be registered.

3. I have perused the records and heard Mr. Salunkhe, the learned Counsel for the applicant, Mr. Lawate, the learned Counsel for the intervenor and the learned APP for the State.

4. At the outset, it may be mentioned that Section 18 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act creates a bar on the applicability of Section 438 of the Cr.P.C to any case involving the arrest of any person on an accusation of having committed an offence under Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act.

In the case of **Vilas Pandurang Pawar vs. State of Maharashtra 2012(4) Bom.C.R. (Cri.) 408**, the Apex Court has held as under:

- “8. Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence Under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, 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.
9. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in the critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

5. It is also to be noted that in the case of ***Subhadra Sushil Anand v. State of Maharashtra 2008(1) BCR 494*** the Division Bench of this Court has held that:

“ 9. Plain reading of the provisions of law comprised under Section 3(1)(x) of the said Act would reveal that in order to enable the police to take cognizance of the offence committed under the said provisions of law, it would be necessary for the complainant to disclose tht the person who is accused of commission of offence under the said Act is not a member of the Scheduled Caste or a Scheduled Tribe and lastly that such incident should occur in public view. In other words, the complaint has not only to reveal the caste of the person who is a member of a Scheduled Caste or a Scheduled Tribe and lastly that such incident should occur in public view. In other words, the complaint has not only to reveal the caste of the person who is sought to be insulted or intimidated or humiliated but he should also disclose that such person belongs to a Scheduled Caste or a Scheduled Tribe. It is only when the accusation is with an intention to insult or intimidate or to humiliate has been made by a person not belonging either to a Scheduled Caste or Scheduled Tribe, and such incident occurs in a public view, only in that case, it could be said to have committed an offence under Section 3(1) (x) of the said Act and not otherwise. Obviously, therefore, if the compliant does not disclose that the accued person does not belong to a caste other than Scheduled Caste or Scheduled Tribe, it would not disclose an offence in terms of the said Section, sufficient to take cognizance thereof by the police”.

Similarly, the learned Single Judge of this Court in ***Suresh Giram v.***

State of Maharashtra 2015(3) BCR 180 has held that mere reference to the caste does not constitute any offence under Section 3(i)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. Reverting to the facts of this case, the FIR does not disclose the caste of the complainant or that of the accused. It merely discloses that the applicant had referred to him as “belonging to Bhangi caste”. The FIR does not indicate that the complainant belong to the said caste or that the applicant had uttered the said words knowing that the applicant belongs to the said caste.

6. In view of the above, in my considered view, the FIR does not prima facie disclose the essential ingredients of Section 3(i)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. Hence the bar of Section 18 is not attracted. The other offences 504 and 506 IPC are bailable and the applicant is otherwise entitled to be released on bail.

7. The nature of allegations levelled against the applicant does not justify custodial interrogation. Hence the application for anticipatory bail is allowed on the following terms and conditions.

- i) In the event of arrest of the applicant in Crime No.75 of 2015 of Daund Police Station, the applicant be released on bail, on the applicant furnishing bail bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one solvent surety in the like amount to the satisfaction of the learned JMFC, Daund, Pune.
- ii) The applicant shall report to the Investigating Officer for four days between 10 a.m. to 1.p.m. for the purpose of investigation and interrogation.
- iii) The applicant shall not leave Pune District till filing of the chargesheet without prior permission of the JMFC, Daund.

8. In view of disposal of anticipatory bail application, the intervention application no. 851 of 2015 does not survive and the same is dismissed.

(ANUJA PRABHUDESSAI, J.)