

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1468 OF 2015
WITH
CRIMINAL APPLICATION NO.912 OF 2015**

Shital Sameer Tapkir

..Applicant

v/s.

The State of Maharashtra.

..Respondent

Mr. Biju A. Aloor for the applicant.

Mr. S. S. Pednekar, APP for the State.

Mr. Ashok B. Tajane for the applicant (APPP 912/2015).

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : NOVEMBER 26, 2015.

P.C.

. This is an application for anticipatory bail filed by the aforesaid applicant apprehending his arrest in C. R. No.3101 OF 2015 registered with Chaturshrungi Police Station for the offences punishable under Sections 323, 504, 506 r/w 34 of the IPC and under Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

2. The learned counsel for the applicant, submitted that co-accused has already been granted anticipatory bail. He has further submitted that the statements of the witnesses do indicate that the

applicant herein was involved in abusing the complainant with reference to his caste . On the contrary the records reveal that the the abusive words were given by the co-accused. He therefore claim that the bar of section 18 is not applicable to the facts of the present case. He further submits that investigation is already completed and the presence of the applicant is not required for custodial interrogation.

4. The Learned APP for the State submitted that the complaint prima facie discloses offence under Section 3(1)(x) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SC/ST Act) and hence in terms of section 18 the provisions of section 438 can not be made applicable.

5. I have perused the records and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State that there is a specific bar.

6. At the outset it may be mentioned that Section 18 of the SC/ST Act creates a specific bar in the grant of anticipatory bail. Section 18 of the SC/ST Act reads as under:

“18. Section 438 of the Code not to apply to persons committing an offence under the Act.- Nothing in section 438 of the code shall apply in relation to any case

involving the arrest of any person on an accusation of having committed an offence under this Act.”

7. In the instant case perusal of complaint prima facie shows that on 9/8/2015 at about 12.15 p.m. the applicant and others had gathered in the open space outside the lift on the 10th floor and that the applicant herein had abused the complainant with reference to his caste. Perusal of the complaint prima facie reveals that the said insulting words were prima facie used with an intention to humiliate the complainant who belongs to the SC/ST caste. Thus, in my considered view the complaint prima facie discloses the essential ingredients of section 3(x) of the SC/ST Act and hence bar of Section 18 will be applicable.

8. Perusal of the order dated 23/9/2015 passed by the Additional Sessions Judge, Pune reveals the other co-accused have been granted anticipatory bail as there are no specific allegations against them that they were involved in abusing or insulting the complainant with reference to his caste. Hence the fact that they are granted bail is not a ground to hold that bar of Section 18 is not applicable as far as present applicant is concerned.

9. In the light of the above principle laid down by the Apex Court in my considered view application is not maintainable in view of specific bar under Section 18 of the SC/ST Act. Hence it is dismissed.

10. Criminal Application No.912 of 2015 stands dismissed in view of disposal of main ABA No.1468/2015.

(ANUJA PRABHUDESSAI, J.)