

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1540 OF 2015

Nitin Anna Patil (Nikam)

..Applicant

v/s.

The State of Maharashtra.

..Respondents

Mr. Aniket Nikam for the Applicant

Mr. J.H.Ramugade, APP for the Respondent/State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATED : NOVEMBER 18, 2015.**

**P.C.**

1. By this application the applicant herein has sought anticipatory bail, apprehending his arrest in Crime No. 25 of 2015, registered by Abhona Police Station under Section 323, 504, 506 IPC and Section 3 (i)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. Shri Nikam, learned Counsel for the applicant has submitted that merely referring to a person by his caste does not constitute offence under Section 3(i)(x) of the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act. He has submitted that the allegations made in the FIR do not prima face disclose commission of offence under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and hence bar of Section 18 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not applicable to the facts of the case. He has relied upon the decision of the Division Bench of this Court in *Subhadra Sushil Anand vs. State of Maharashtra*, as well as the decision of Single Judge of this court in *Suresh Laxman Giram vs. State of Maharashtra*. He has further submitted that the other offences are bailable and hence the applicant is entitled for bail.

3. The learned APP had earlier sought time to file a short reply with regard to the complicity of the applicant in the crime. Since the application can be disposed of on the basis of the records, filing of the reply is dispensed with. Shri Ramugade, the learned APP has submitted that the FIR discloses offence under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and hence the applicant is not entitled for anticipatory bail.

4. I have considered the submissions advanced by the learned counsel for the respective parties. I have also perused the record. The record prima facie reveals that one Gautam Gangurde had lodged a complaint that on 5.9.2015 at about 7 p.m. while he was inside his house, the applicant came near his house and made a reference to his caste by saying “Mhardya” and called him out of the house and thereafter abused him and assaulted his son by kicks and blows. On the basis of the said FIR, Crime No.I-25 of 2015 under Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act came to be registered.

5. 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 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 Attrocities) 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.”*

6. It is also to be noted that in the case of **Subhadra Sushil**

**Anand** (supra) 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 that 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 complainant does not disclose that the accused 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** (supra) 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. The FIR only states that the accused had called out to them by saying “Mhardyano”. It does not indicate that the accusation was made with an intention to insult, or humiliate the complainant and his family members.

6. Considering the above facts, in my considered view, the FIR does not prima facie disclose the offence under 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 are bailable. Considering the nature of the allegations, the applicant is entitled to be released on bail. Hence, the anticipatory bail application is allowed on the following terms and conditions.

- i) In the event of arrest of the applicant in C.R.No.I-25 registered at Abhona Police Station, the applicant be released on bail bond of Rs.15000/- (Rupees Fifteen Thousand Only) with one solvent surety of the like amount to the satisfaction of the Sessions Judge,

Nashik.

ii) The applicant to report to the Investigating Officer for four days between 10.00 a.m. to 1.00 p.m. for the purpose of investigation and interrogation.

**(ANUJA PRABHUDESSAI, J.)**