

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

ANTICIPATORY BAIL APPLICATION NO.1546 OF 2015

Amol Maruti Gawade	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Rahul S Kate, Adv. for applicant.
Mr. S S Pednekar, APP for State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 3rd December, 2015.

P.C. :

1. This is an application for anticipatory bail filed by the aforesaid applicant apprehending his arrest in Crime No. 271 of 2015 registered at Daund Police Station, for the offences punishable under Sections 354(A) of IPC and 3(1) (x) (xi) of SC & ST (Prevention of Atrocities Act).

2. Mr. Rahul Kate, the learned counsel for the applicant submitted that the FIR does not reveal the ingredients of the offence under Section 3(1) 3(1) (x) (xi) of SC & ST (Prevention of Atrocities Act) and hence the bar of Section 18 is not applicable. He further submits that the complaint is filed after the victim was disqualified for the post of District Drill Instructor (DDI) on medical grounds. The nature of the allegations levelled against the applicant does not justify custodial interrogation.

3. Mr. Pednekar, learned APP has submitted that the FIR prima facie discloses that the applicant had abused the victim with

reference to her cast. He, therefore, submits that in view of the Section 18 of the SC & ST (Prevention of Atrocities Act) the application itself is not maintainable.

4. I have perused the records and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State. 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 Vs. State of Maharashtra* 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 compliant 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”.

6. Similarly, the learned Single Judge of this Court in *Suresh Laxman Giram Vs. State of Maharashtra* 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.

7. Reverting to the facts of the present case, the FIR does not disclose the caste of the complainant or that of the accused / applicant. The complaint only states that the applicant had referred to complainant as “Maharde”. There is no prima facie material on record to show that the said words were used by applicant knowing that she belongs to the schedule caste. Considering the above facts in my considered view the FIR does not prima facie disclose the essential ingredients of the offence under Sections 3(1) (X) (XI) SC & ST (Prevention of Atrocities Act) and hence the bar of Section 18 would not be attracted. The other offence under Section 354 (A) is bailable.

8. Considering the nature of the allegations, the applicant is entitled to be released on bail. The applicant is a permanent resident of Daund, Pune hence there is no possibility of the applicant absconding or thwarting the course of justice.

9. Hence the application is allowed on the following terms.

1. In the event of arrest of the applicant in Crime No. 271 of 2015 registered at Daund, Police Station, the applicant shall be released on bail bond of Rs.15,000/(Rupees Fifteen Thousand Only) with one or two sureties in the like amount to the satisfaction of the learned Judicial Magistrate, First Class, Daund.
2. The applicant shall report to the investigating officer for 7 days

between 10 am to 1 pm and further as and when required by the investigating officer for the purpose of the interrogation.

3. The applicant shall not tamper with the evidence or influenced complainant and witnesses in any manner.
4. The applicant shall not leave Daund, Pune till the chargesheet is filed or without prior permission of JMFC, Daund.

(ANUJA PRABHUDESSAI, J.)