

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

ANTICIPATORY BAIL APPLICATION NO. 1588 OF 2015

Sunil Dashrath Palave .. Applicant

v/s.

The State of Maharashtra ..Respondent

Mr. Aniket U. Nikam for the applicant
Mrs. R.V. Newton, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 17th NOVEMBER, 2015.**

P.C.

1. By this application, the applicant has sought anticipatory bail apprehending his arrest in Crime No.458 of 2015 registered with Baramati City Police Station for the offence under Sections 384, 452, 336, 324, 323, 504, 506 r/w 34 of the IPC and Section 3(i)(x) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act.

2. Heard the learned Counsel Mr. Nikam for the applicant and the learned APP for the State.

3. In the instant case, the FIR lodged by Mr. Pankaj Zende reveals that the co-accused Rakesh Gaikwad and Kiran Pisal had entered into the cyber cafe and extorted sum of Rs.1,300/- and Rs.2,000/-. It is alleged that on 05.10.2015, the present applicant along with said Rakesh and Kiran entered the cyber cafe and that Kiran Pisal abused him and his employee Dayawan with reference to their castes by saying “mahardya”. The complainant has further stated that the applicant and Kiran Pisal had assaulted with kick and blows and had abused them with reference to their caste and threatened to cause their death if they did not pay the money. Based on the said report, FIR No.458 of 2015 came to be registered against the applicant and other two accused.

4. It may be mentioned that section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act creates a clear 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 Schedule Castes and Schedule 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 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 thus clear that the bar under Section 18 is absolute unless the complaint does not contain specific averment relating to the offence under SC & ST Act.

6. In the instant case, there is no specific allegations in the complaint stating that the applicant herein had abused the complainant or his employee by making reference to his caste. In the Case of *Shashikant Ramhari Tambe & Ors. Vs. State of Maharashtra 2008(9) LJSoft 37*, this Court, relying upon the decision of the Apex Court in the case of *Mukesh Kumar Saini Vs. State (Delhi Administration) reported in 2002 ALL MR (Cri.) Journal 41*, has held that there must be specific accusation alleged against each of the accused and Section 34 of the IPC cannot be pressed into service. Omnibus statement that all the accused persons uttered allegedly humiliating word may not be enough. In the instant case, the FIR does not specifically state that the applicant herein had abused, insulted or humiliated the applicant by making reference to his caste. Hence, the bar of

Section 18 of the SC & ST Act is not applicable to the facts of the present case.

7. The other allegations levelled against the applicant cannot be considered to be grave or heinous, which would warrant custodial interrogation. It is further submitted that the applicant herein is a student and does not have any criminal antecedents. Considering these aspects, in my considered view, the applicant is entitled for anticipatory bail.

8. Under the circumstances, the application is allowed on the following terms and conditions.

(i) In the event of arrest of the applicant in C.R. No. 458 of 2015, the applicant be released on bail on furnishing bail bonds of Rs.25,000/- with one or two surety in the like amount to the satisfaction of the learned J.M.F.C., Baramati.

(ii) The applicant shall furnish their local as well as permanent

address. The applicant shall not leave the jurisdiction of JMFC, Baramati without prior permission of the Court.

(iii) The applicants shall report the Investigating Officer for a period of 8 days from the date of the receipt of the order from 10.00 a.m. to 1.00 p.m. and / or as and when required by the I.O. for the purpose of interrogation and investigation.

(iv) The applicant shall not temper with the evidence or attempt to influence the complainant in any manner.

(ANUJA PRABHUDESSAI, J.)