

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

**ANTICIPATORY BAIL APPLICATION NO.1848 OF 2015**

Abhijit Raghunath Phadnis

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Vaibhav V. Ugle for the Applicant.

Ms R.V. Newton, APP for the Respondent -State.

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

**DATE : 8<sup>th</sup> DECEMBER, 2015.**

**P. C. :**

This is an application for anticipatory bail filed by the aforesaid Applicant apprehending his arrest in Crime No. 52 of 2015 registered with Indapur Police Station, Pune, for the offences punishable under sections 3(1) (x) of the Scheduled Castes and Scheduled Tribes Act (Prevention of Atrocities Act) 1989, (hereinafter referred to as 'the Act').

2. Heard the learned counsel for the Applicant. He has submitted that the complaint does not prima facie disclose offence under section 3 (1) (x) of the Act. He therefore, contends that the bar under section 18 of the Act is not applicable to the facts of the case.

3. The learned APP submits that the FIR discloses the essential ingredient of the section 3(1) (x) of the Act and therefore, bar under section 18 of the Act is applicable to the present case and the application is not maintainable.

4. I have perused the records and considered submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State. The records prima facie reveal that one Santosh, who has discloses his caste as “ Hindu Mang” had lodged FIR on 5.11.2015 that on 24.9.2015 at 10.30 a.m. when he had gone to the cabin of Abhijit Phadnis, Superintendent Medical Officer, he had abused him with reference to his caste despite knowing that he belonged to the said caste. He has further stated that at the time of said incident some members of public were present. The allegations levelled in the FIR prima facie discloses essential ingredient of offence under section 3(1)(x) of the Act.

5. It may be mentioned that in the case of **Vilas Pandurang Pawar Pandurang Pawar 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.”

6. Considering the principles laid down by the Hon'ble Apex

Court and also considering the averments made in the complaint, in my considered view bar of section 18 is clearly attracted. Hence the application under section 438 of the Criminal Procedure Code is not maintainable. The application is therefore, dismissed.

7. At this stage, the learned counsel for the Applicant submits that the Applicant would be surrendering before the Sessions Court, Baramati and would file an application for bail. The learned APP, under instructions submits that the Applicant will not be arrested for a period of seven days to enable him to surrender and file application before the appropriate Court.

**(ANUJA PRABHUDESSAI, J.)**