

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.207 OF 2016

Javed Latif Shaikh & Anr. .. Applicants

v/s.

The State of Maharashtra. .. Respondent

Mr. Javed R. Shaikh, Adv. for the Applicant

Mrs. Veera Shinde, APP for the Respondent-State.

Mr. S.P. Regude, PHC, SDPO, Solapur, Rural present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : FEBRUARY 03, 2016.

P.C.

1. At the outset the learned Counsel for the applicant submits that he does not wish to press the application as regards the applicant no.1 . He seeks leave to amend the application as to delete the name of the applicant no.1. Leave granted. Amendment to be carried out forthwith.

2. This is an application for anticipatory bail filed by the aforesaid applicants apprehending their arrest in Crime No.118 of 2015 registered with Kamati Police Station, Solapur for offences punishable under Section 3(i)(x) of SC & ST Act and 7(1)(D) of

P.C.R. Act and 324, 323, 504, 506 r/w. 34 of the Indian Penal Code.

3. The case of the prosecution in brief is that on 30.12.2015 the applicants herein abused and assaulted the complainant Sunanda Hari Sonavale in filthy words as well as by making reference to her caste. Pursuant to the complaint lodged by said Sunanda, FIR came to be registered. Apprehending their arrest the applicants filed application for bail before the Sessions Court, Solapur. The learned Sessions Judge dismissed the said application by order dated 27.1.2015. Hence the present application.

4. The learned Counsel for the applicant submits that the FIR prima facie does not indicate that the applicant herein had abused the complainant with reference to her caste and hence the bar of Section 18 of SC & ST Act is not applicable. He further submitted that the allegations leveled against the applicant do not justify custodial interrogation.

5. The learned APP for the State submitted that the FIR discloses the that the applicant had abused the complainant in filthy language by making reference to her caste. She therefore submits that the applicant is not entitled for bail.

6. I have perused the record and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State. At the outset it may be mentioned that Section 18 of the SC & ST Act deals with the bar of invoking Section 438 of the Code. 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.”

7. In the instant case, the FIR prima facie does not indicate that the applicant herein had abused the complainant with reference to her caste. Since the FIR does not prima facie disclose essential ingredients of Section 3(1)(x) of the Act as against these applicants, in my considered view, the bar of Section 18 would not be attracted. The imputations against the applicant are that they had abused the complainant and that the applicant Digambar had assaulted her by giving slaps and twisted her hand and pelted stones and caused head injury. The aforesaid imputations do not justify custodial interrogation.

8. The applicants are permanent residents of Solapur and they have no criminal antecedents. There are no chances of the applicants absconding or thwarting the course of justice.

9. Considering the above facts and circumstances the application is allowed on the following terms and conditions.

- i) In the event of arrest of the aforesaid applicants in Crime No.118 of 2015 registered with Kamati Police Station, Solapur, the applicants be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one solvent surety in the like amount to the satisfaction of the learned Sessions Court, Solapur.
- ii) The applicants shall report to the Investigating Officer for four days from 10 a.m. to 1.p.m. from the date of receipt of the order, for the purpose of investigation and interrogation.
- iii) The applicants shall not leave Solapur District till filing of the chargesheet without prior permission of the Sessions Judge, Solapur.

(ANUJA PRABHUDESSAI, J.)