

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CR. ANTICIPATORY BAIL APPLN. NO. 117 OF 2016

NARGIS RASHID SHAIKH ...Petitioner(s)

Versus

THE STATE OF MAHARASHTRA ...Respondent(s)

Mr. V.B. Shivarkar for the Applicant

Mr. S.H. Yadav, APP for the Respondent -State.

Ms Swapna Gore,ACP, Khadki Division, Pune City, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J

DATED: 22nd January, 2016

PC:-

This is an application for anticipatory bail filed by the aforesaid Applicant, in apprehension of her arrest in Crime No.3003 of 2016 registered at Yerwada Police Station, Pune, for offences punishable under section 506 of the IPC, sections 3 (1) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and section 7 (1) (d) of Protection of Civil Rights Act.

2. The allegations against the Applicant in brief are that on 8.1.2016, the Applicant herein and her son had intentionally insulted Mr. Narayan Ghorpade by making reference to his caste and thereafter threatened to cause death. Pursuant to the said complaint the aforesaid FIR came to be lodged.

3. Apprehending their arrest in the said crime the Applicant and the other co-accused had filed an application for anticipatory bail. The learned Additional Sessions Judge granted anticipatory bail filed by the co-accused Amir and Anwar, but dismissed the application filed by the aforesaid Applicant mainly on the ground of bar by section 18 of the Scheduled Castes and Scheduled Tribes Act.

4. Heard Mr. Shivarkar, the learned counsel for the Applicant. He has submitted that the complaint does not prima facie disclose the offence under section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He has submitted that there is previous enmity between the Applicant and the complainant. The Applicant herein had also filed a complaint against the complainant,

pursuant to which crime No.17 of 2016 has been registered against the complainant at Yerwada Police station.

5. Mr. S.H. Yadav, the learned APP submits that the complaint prima facie discloses offence under sections 3 (1) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. He therefore, claims that bar under section 18 is applicable and the application for anticipatory bail is not maintainable.

6. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State. At the outset it may be mentioned that section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 creates a bar on the applicability of section 438 of the Criminal Procedure Code 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.”

7. In the instant case, a perusal of the complaint lodged by Narayan Ghorpade, reveals that on 8.1.2016 at about 3.00 p.m. while he was inside his house, one driver of truck bearing No.MH-05/1725 was trying to remove the motorcycle of the complainant, which was parked in his property. The complainant had stated that when he had questioned the truck driver about the same, the Applicant herein had abused him by making reference to his caste.

8. The complaint prima facie indicates that at the time of the incident the Applicant was inside the house whereas the complainant was standing outside his house. The complaint does not indicate that the alleged incident had occurred in a place within public view. Hence, prima facie the bar under section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 would not be applicable.

9. The nature of the allegations levelled in the complaint against the Applicant would not justify custodial interrogation. Furthermore, the records reveal that there is previous enmity between the Applicant and the complainant and the Applicant had already lodged complaint against the present complainant. The above facts and circumstances do not justify

custodial interrogation. The Applicant has roots in the society and is not likely to abscond. The Applicant does not have criminal antecedent.

10. Under the circumstances and in view of discussion supra, the application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicant in Crime No.3003 of 2016 registered at Yerwada Police Station, Pune, the Applicant shall be released on furnishing bail bonds of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety to the like amount to the satisfaction of the Sessions Court, Pune.
- (ii) The Applicant shall report to the Investigating Officer for four days from 10.00 a.m. to 1.00 p.m. and from the date of the receipt of this order and thereafter as and when required by the Investigating Officer for the purpose of interrogation.
- (iii) The Applicant shall not interfere with the complainant or other witnesses in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)