

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

ANTICIPATORY BAIL APPLICATION NO. 126 OF 2016

Yashwant Sambhaji Kale

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Ganesh Bhujbal for the Applicant.

Mrs. G. P. Mulekar, APP for the Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 25th JANUARY, 2016.

P. C. :

1. This is an application filed by the aforesaid applicant apprehending his arrest in Crime No. 445/15 registered with Shirur Police Station for the offences punishable under Section 354 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The case of the prosecution in brief is that on 14.12.2015 the applicant herein had outraged the modesty of the complainant and abused and insulted her with reference to her caste.

3. The learned Counsel for the applicant submitted that in the complaint which was lodged on the very next date before the Tanta Mukht Samiti, the complainant had not alleged that the applicant herein had insulted the complainant with reference to her caste. The learned Counsel further submitted that the allegations of outraging the modesty of the complainant is bailable offence. It is submitted that the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not prima facie made out. Hence the bar of Section 18 of the is not applicable.

4. The learned APP has submitted that the complainant was not required to disclose all the facts before the Tanta Mukht Samiti. The learned APP has further stated that the FIR further discloses in view of the bar under Section 18 the application for anticipatory bail is not maintainable.

5. I have perused the records and considered the submissions advanced by the learned APP. At the outset 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 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 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. 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.

7. In the present case the record reveals that Mrs. Sangita Rajendra Chavan had lodged complaint on 15.12.2015 before the Tanta Mukta Samiti wherein she alleged that the applicant had outraged her modesty. The said complaint does not make any reference to the offence under the SC & ST Act. The said Sangita Chavan had lodged FIR on 19.12.2015 wherein for the first time she had alleged that the applicant had also insulted by making referent to her caste. It is to be noted that the said complaint is an improvised version, lodged about 5 days after the incident, and prima facie appear to have been made with an intention of depriving the applicant the benefit of Section 438 of the Cr.P.C. Hence, the bar of Section 18 would not be applicable. The other offences allegedly committed by the applicant are bailable. The facts and circumstances of the case do not justify custodial interrogation. Under the circumstances the application is allowed on the following terms and conditions:

- (a) In the event of the arrest of the applicant in Crime No. 445/2015 registered with Shirur Police Station the applicant is released on bail furnishing bail bond of Rs.20,000/- (Rupees

Twenty Thousand only) with one surety in the like amount to the satisfaction of the Sessions Judge, Pune.

(b) The applicant shall report the Investigating Officer for 4 days from 10 a.m. to 1 p.m. from the date of the receipt of this order.

(c) The applicant shall not interfere with the complainant or the other witnesses in any manner.

(d) The applicant shall not leave Pune district till filing of the charge-sheet without prior permission of the Sessions Court, Pune.

(ANUJA PRABHUDESSAI, J.)