

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.179 OF 2016

|                               |     |            |
|-------------------------------|-----|------------|
| Nitin Dattaram Warange & Ors. | ... | Applicants |
| Vs.                           |     |            |
| The State of Maharashtra      | ... | Respondent |

Mr. Sachin R. Pawar, Adv. for the applicants.  
Mr. D.P. Adsule, APP for the State.  
Mr. Vivek Babar, Adv. for original complainant / interfere.

**CORAM : SMT ANUJA PRABHUDESSAI, J.**  
**DATE : 1<sup>st</sup> February, 2016.**

**P.C. :**

1. This is an application for anticipatory bail filed by the aforesaid applicants apprehending their arrest in Crime No.14 of 2016 registered with Roha Police Station for offences punishable under Section 3(1) (10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 504 and 506 of the IPC.

2. The case of the prosecution in brief is that the applicants herein abused and insulted the complainant Deepak Chiplunkar with reference to his caste and further threatened to cause his death. Pursuant to the FIR lodged by Deepak the aforesaid crime was registered. Apprehending their arrest the applicants had filed

application for anticipatory bail before the Addl. Sessions Judge, Mangaon, Dist. Raigad. Said application came to be dismissed vide order dated 25<sup>th</sup> January, 2016. Hence the present application.

3. Mr. Pawar, the learned counsel for the applicants has submitted that the complainant is working as Village Development Officer at village Rothe and the applicants are ward members of the grampanchayat. He has submitted that the complainant is holding same post for last 13 years and the applicants have sought transfer of the complainant and being aggrieved by the same the complainant has lodged false complaint. The complainant had earlier lodged similar complaints. He has placed on record copies of the judgment in Summary Cri. Case No.889 of 2000 and Special Case No.29 / 88 of 1997 wherein the complainant had made similar allegations. The accused in the said cases were acquitted. The learned counsel for the applicant further submitted that the allegations made in the complaint are general in nature and the bar under Section 17 is not attracted. It is submitted that the nature of the allegations levelled against the applicant do not require custodial interrogation and hence the applicants are entitled for bail.

4. Mr. Adsule, the learned APP for the State and Mr. Babar, the learned counsel for the intervener have submitted that the complaint prima facie disclose the essential ingredients of Section 3(1) (10) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence application under Section 438 of the Cr.P.C. is not maintainable.

5. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties. 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 Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act. In the case of **Vilas Pawar Vs. State of Maharashtra 2012(4) Bom C R (Cri) 408**, the Apex Court has held that :

*“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.*

*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. In the instant case a perusal of the FIR indicates that the complainant has made omnibus or general allegations against all the applicants that they had abused him by saying that “*Madarchot, Chamtya Gramsevak*’. Said allegations are general in nature and hence in my considered view provisions of Section 18 would not be attracted.

7. The records prima facie reveal that there is a long standing dispute between the complaint and the applicants. Furthermore the applicants have already sought transfer of the complainant. The records also reveal that the complainant had made similar complaint against one Devji Bhagat which has ended into acquittal. The nature of the allegations levelled against the applicants, in my considered

view do not justify custodial interrogation. The applicants are otherwise permanent residents of Raigad and there is no possibility of the applicants absconding. The applicants have no criminal antecedents.

8. Hence the application is allowed on the following terms and conditions.

1. In the event of arrest of the aforesaid applicants in Crime No.14 of 2016 registered with Roha Police Station, the applicants be released on bail bond of Rs.20,000/- (Rupees Twenty Thousand Only) each with one surety in the like amount to the satisfaction of the JMFC, Roha.
2. The applicants shall report to investigating officer for 4 days from 10 am to 1 pm from the date of the receipt of the order and further as and when called by the investigating officer for the purpose of the interrogation.

( ANUJA PRABHUDESSAI, J. )