

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 246 OF 2016

Anil Shivaji Kurghode ..Applicant

v/s.

The State of Maharashtra. ..Respondents

Mr.Subhash Jha a/w. Rushita Jain for the Applicant
Mrs. Veera Shinde, APP for the Respondent-State.

**WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 266 OF 2016**

1. Ajit Ramnath Patil
2. Nitin Atmaram Patil and
3. Minakshi Ajit Patil. ..Applicants

v/s.

The State of Maharashtra. ..Respondents

Mr.Satyajeet Joshi for the Applicant
Mr. D.P.Adsule, APP for the Respondent-State.

**WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 269 OF 2016**

Kantilal Harishchandra Kadu ..Applicant

v/s.

The State of Maharashtra. ..Respondents

Mr. Prakash Naik i/b. Imtiyaz A.I. Patel for the Applicant

Mr. J.H.Ramugade, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : FEBRUARY 17, 2016.**

P.C.

1. These applications are filed by the aforesaid applicants apprehending their arrest in Crime No. I-23 of 2016 registered with Uran Police Station for offences punishable under Section 385, 501 of the Indian Penal Code r/w. Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
2. The aforesaid crime came to be registered pursuant to the FIR lodged by one Alka Jamkar. The first informant belongs to Daivadnya Brahmin Caste. She claims to be of SC & ST Caste by virtue of her marriage to a person of the said caste. The complainant had alleged that a news item was published in a daily news paper "Dainik Nirbhid" and weekly "Zunzar Mat", wherein reference was made to her caste with an intention to insult and humiliate her.
3. In view of the allegations and registration of the crimes, the applicants filed applications for anticipatory bail before the Special Judge Raigad. The dismissal of the said applications has led to filing

of the present applications.

4. Heard learned Counsel Shri Jha in ABA/246/2016, Shri Joshi in ABA/266/016 and Shri Naik in ABA/269/2016, and the learned APP for the State in the respective applications.

5. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

6. At the outset it may be mentioned that Section 18 of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act creates a 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 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 pf 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. Reverting to the facts of the present case, the FIR indicates that the first informant is a Hindu Daivadnya Brahmin, married to a person belonging to SC ST Caste (Burud Samaj). The applicant claims to be a member of SC ST by virtue of her marriage . It may be mentioned that in the case of ***Meera Kanwaria v. Sunita & Ors. [(2006) 1 SCC 344]***, the Apex Court after considering the previous pronounced on the issue, has held that “a person who is a high-caste Hindu and not subjected to any social or educational backwardness

in his life, by reason of marriage alone cannot ipso facto become a member of the Scheduled Caste or the Scheduled Tribe.”

8. Learned APP Shri Adsule has submitted that by virtue of the amendment, the applicant being the wife of a person who belongs to the SC & ST Caste is a victim within the meaning of Section 3(e)(c).

Section 3(e)(c) provides that :

“(ec). “victim” means any individual who falls within the definition of the “Scheduled Castes and Scheduled Tribes” under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;”.

The complainant does not fall within the definition of SC & ST in clause (c) of sub section (1) of Section 2, and hence the complainant cannot be considered to be a member of SC & ST Act merely by virtue of her marriage to a person belonging to SC & ST Caste.

9. Under the circumstances, prima facie, the complainant is not member of the SC ST Caste and hence the bar of Section 18 will not be applicable. The other two offences under Section 385 and 501 of IPC are bailable. Considering the above facts and circumstances, the

applicant is entitled for bail. Under the circumstances, an in view of the discussion supra application is allowed.

i) In the event of arrest of the aforesaid applicants in Crime No. I-23 of 2016 registered with Uran Police Station , Navi Mumbai, the applicants be released on bail on furnishing bail bond of Rs.15,000/- (Rupees Fifteen Thousand Only) each with one solvent surety in the like amount to the satisfaction of the learned Special Judge, Raigad.

ii) The applicants shall report to the Investigating Officer for two days from 10 a.m. to 1 p.m. for the date of receipt of this order.

(ANUJA PRABHUDESSAI, J.)