

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 342 OF 2016

Satish Mahadev Kadam & Ors. ..Applicants

v/s.

The State of Maharashtra. ..Respondents

Mr. Ashok Mundargi, Sr. Counsel, i/b. Jayant Bardeskar for the Applicant

Mr. Y.M.Nakhawa, APP for the Respondent-State.

Mr. Gajanan Kadale, API Pimpri Police station present.

Mr. Mohan Vidhate, ACP Pimpri Division, Pune City present.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : FEBRUARY 24, 2016.**

P.C.

1. By this application filed under Section 438 of Cr. P.C. the present applicants have sought pre-arrest bail in Crime No.648 of 2015 registered with Pimpri Police Station, Pune for offences punishable under Section 143, 147, 149, 307, 324, 504, 506 of the Indian Penal Code, Section 3(25) of the Arms Act, and Section 37(1) (10) of the SC & ST Act.

2. The allegations against the applicants are that on 10.12.2015 they had formed an unlawful assembly, armed with deadly weapons and that they had inflicted injuries on Gita Mancherkar and Hamid Shaikh and attempted to cause their death. It is also alleged that the applicants and others had assaulted Mumtaz & two others. The applicants are also alleged to have abused Gita Mancherkar with reference to her caste.

3. Apprehending their arrest in the said crime, the applicants had filed application for bail before the Addl. Sessions Judge, Pune. The said applications were dismissed vide order dated 31.12.2015. Hence the present application.

4. Mr. Mundargi, the learned counsel for the applicants submitted that the applicant nos.9 and 10 are not named in the FIR. He has further submitted that the applicant no.3 himself belongs to "Vadar" community and being a person from schedule caste, the provisions of SC & ST Act are not applicable to him. He has further submitted that the FIR prima facie does not disclose that the applicants are

involved in committing offence under Section 3(i)(x) of the SC & ST Act and that the allegations in respect of offence under SC ST Act were made by the witness Gita Mancherkar for the first time after five days of the incident. He has submitted that said Gita Mancherkar has made allegations only against two Corporators and two other ladies who were not named in the FIR. He has submitted that in view of above the bar under Section 18 of SC & ST Act is not applicable to the facts of the present case.

5. The learned Senior Counsel Shri Mundargi, has further submitted that the incident had occurred at the spur of the moment and was not pre-mediated. The medical certificate also does not prima facie indicate that the applicants had inflicted any grievous injury either on Gita Mancherkar or the other persons who were allegedly assaulted. The learned Counsel therefore submits that this is a fit case for grant of pre-arrest bail.

6. Shri Nakhawa, the learned APP submits that Gita Mancherkar was admitted in the ICU and hence her statement could not be

recorded immediately after the incident. He has further submitted that the statement of Gita Mancherkar reveals that the applicant nos. 9 and 10 had insulted her with reference to her caste. He therefore contends that by virtue of Section 18 of the SC & ST Act, the applications for bail are not maintainable..

7. I have perused the records and considered the submissions advanced by the learned counsel for the applicants and the learned APP for the State.

8. At the outset it may be mentioned that Section 18 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act creates a clear bar on the applicability of Section 438 of Cr.P.C. to any case involving the arrest of any person on an accusation of having committed an offence under Schedules 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 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.”

9. 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.

10. In the present case, the FIR does not indicate that the applicants herein were involved in abusing or insulting Gita Mancherkar with reference to her caste. The statement of Gita Mancherkar which was recorded five days after the incident, indicates that the co-accused by name Kailash Kadam and Sadguru Kadam, as well as their wives Nirmala Kadam and Parvati Kadam , the applicant nos.9 and 10 herein had abused her with reference to her caste., It is to be noted that Nirmala and Parvati are not named in the FIR which was lodged immediately after the incident. The FIR does not prima facie indicate that Nirmala and Parvati, the applicant nos.9 and 10 were present at the place of incident or that they were involved in the incident in any manner. In the light of the above facts and circumstances, in my considered view, the bar of Section 18 would not be applicable to the present case.

11. The records prima facie indicate that on 10.12.2015 there was a meeting at Bal Bhavan, Kharalwadi, Pimpri Chinchwad, Pune which was attended by the Corporators and some other members of Ward No.40 and 41. The meeting initially proceeded without any

untoward incident. The FIR indicates that the complainant had raised questions about illegal constructions carried out in Ward no.40 and 41. He had alleged that the concerned Corporators of the said ward were in collusion with the builders and were allowing them to carry out the illegal construction. The said incidents led to the alleged incident. The record thus prima facie indicates that the incident was not pre-mediated or pre-planned and that the applicants had not assembled at the place of the incident with an intention of assaulting or causing injury to the complainant and others. On the contrary the material on record prima facie indicates that the incident had occurred at the spur of moment.

12. It is also pertinent to note that though the applicants are alleged to have committed offence under Section 307 of IPC the records do not indicate that either the applicant or the other injured persons had sustained any grievous injury. There is no prima facie material to show that the applicants herein were armed with any deadly weapon or that they had inflicted injuries by means of such weapons. On the contrary, the records indicate that both the groups

were involved in a scuffle which led to filing of complaints and cross complaints against each other.

13. Considering the nature of the allegations leveled against the applicant as well as the injuries sustained by the complainant and the other victims, in my considered view, this is not a case which would justify custodial interrogation. The applicants are otherwise permanent residents of Pune District and there is no possibility of the applicants absconding or thwarting the course of justice.

14. In the circumstances, and in view of the discussion supra, the application is allowed on the following terms and conditions:

i) In the event of arrest of the applicants in Crime No.648 of 2015 registered with Pimpri Police Station, Pune, the applicants be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) each with one solvent surety in the like amount to the satisfaction of the learned Judicial Magistrate, First Class, Pimpri.

- ii) The applicants shall not interfere with the complainant or any other witnesses, in any manner.
- iii) The applicants shall report to the Investigating Officer for four days between 10 a.m. to 1.p.m. from the date of receipt of this order, and further as when required by the Investigating Officer for the purpose of investigation and interrogation.

(ANUJA PRABHUDESSAI, J.)