

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

ANTICIPATORY BAIL APPLICATION NO. 1000 OF 2016

Shri Uddhav @ Dada Ramchandra Sanas ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Rahul S. Kate, Advocate for the Applicant.

Mr. S. S. Pednekar, A.P.P. for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 28th JUNE, 2016

P.C. :

1 The applicant/accused in Crime No. 244 of 2016 registered with Baramati Taluka Police Station for the offences punishable under sections 323, 506 of the Indian Penal Code and under section 3(1)(x), 3(1)(iv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at the instance of one Smt. Kamal Kondiba Sonawane, by this application under section 438 of the Criminal Procedure Code, is praying for pre-arrest bail.

2 Heard the learned counsel appearing for the Applicant/accused as well as the learned APP for the State. Learned counsel for the applicant/accused argued that no offence punishable under any of the provisions of S.C.& S.T.

(Prevention of Atrocities) Act is prima facie made out against the applicant in the belated report lodged by the informant.

3 As against this learned APP argued that subsequently offence punishable under section 3(2)(va) is added to the case diary of the crime in question and in view of the judgment of Hon'ble Supreme Court in the case of **Vilas Pandurang Pawar & Anr. vs. State of Maharashtra & Ors.**, in 2-Special Leave Petition (CRL.) No. 6432 of 2012, the application is not maintainable in view of the bar under section 18 of the SC/ST (Prevention of Atrocities) Act, 1989.

4 At the outset, it will be apposite to quote relevant provisions of the SC/ST (Prevention of Atrocities) Act. Section 3(2) (va) reads thus :

“3(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

[(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;]”

It is thus clear that for making the offence punishable under the said section it is incumbent on the part of the prosecution

to establish that the accused person was knowing that the victim is a person belonging to Scheduled Caste or Scheduled Tribe.

5 Perusal of the case diary including the FIR in this case goes to show that the incident allegedly happened on 06.06.2016, whereas the FIR came to be lodged on 09.06.2016 by informant-Smt. Kamal Sonawane. At the time of incident in question she was on the field along with one Lata Jarad. The informant reported to the police that at about 9 a.m. on 06.06.2016 when she was working on the field of one Ashok Taware the present applicant came running and questioned informant-Smt Kamal as to why she had entered in his field. He uttered that she should not come in his field and gave a blow of sugarcane on her thighs and left the spot. This was the incident narrated by the informant in her FIR. However, the informant further alleged that the applicant/accused knew that she belong to Hindu Mahar Caste and, therefore, he assaulted her.

6 Perusal of the case diary shows that statement of one Lata Jarad is recorded by the investigating officer as she was working with the informant at the time of the incident in question. The statement of Lata Jarad does not show that the applicant/accused was knowing that the informant belong to Scheduled Caste. During the investigation, the investigating

officer has recorded statement of daughter-in-law of the informant as well as husband of the informant. Perusal of both the statements does not show that the applicant was knowing that either the informant or her family members belong to the Scheduled Caste. So far as the FIR is concerned, the averments to that effect are inferences of the informant. As such I hold that perusal of the FIR as well as papers of investigation do show that no offence punishable under the provisions of the SC & ST (Prevention of Atrocities) Act, is made out. In this view of the matter, custodial interrogation of applicant is not warranted. Hence, the following order :-

ORDER

- i. This application is allowed.
- ii. In the event of his arrest, the Applicant/accused in Crime No. 244 of 2016 registered with Baramati Taluka Police Station for the offences punishable under sections 323, 506 of the Indian Penal Code and under section 3(1)(x), 3(1)(iv) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, at the instance of one Smt. Kamal Kondiba Sonawane, the applicant/accused be released on PR bond of Rs.

5000/- and on furnishing solvent surety in the like amount.

- iii. As a condition of this order, the applicant should attend Baramati Taluka Police Station on 3rd July, 2016 between 11 a.m. to 2 p.m. and he should co-operate with the investigating officer.
- iv. In addition, the Applicant/accused is directed that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.
- v. The applicant should co-operate the trial court in expeditious disposal of the trial, in the event of filing of the chargesheet.
- vi. The applicant should not commit offence of similar nature in future.

The anticipatory bail application is disposed of accordingly.

(A. M. BADAR, J.)