

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1570 OF 2016**

Rekha Solanki ... Applicant
Versus
The State of Maharashtra and ors. ... Respondents

Mr.Hrishikesh Subhedar, for the Applicant.

Mr. S.H.Yadav, APP for the State.

Mr. C.M.More, API Sahakar Nagar police station, Pune.

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : SEPTEMBER 29, 2016.

PC. :

1. Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.
2. This is an application under section 438 of Cr.PC.. The applicant herein is apprehending her arrest in crime No.206 of 2016 registered at Sahakar Nagar Police Station on 21st July, 2016, for the offences punishable under section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. It is the case of the prosecution that on 21st July, 2016 Girija Balu Kasbe, who belongs to the scheduled caste lodged a report at the police station alleging therein that she works on a cart which collects garbage. That she is residing in a hut on an open land. That on 18.6.2016

while she was filling water alongwith other ladies at that time the presnt applicant, who is the office bearer of Swami Vivekanand Co-operative Housing Society had objected to the same. She had removed the pipe and had abused them by reference to her caste and was questioned as to how she can allow the people belonging to scheduled caste to take water. They had informed one Nitin Pawar and thereafter had lodged the FIR against the present applicant.

4. The learned Counsel for the applicant submits that in fact, the applicant herein happens to be Chairman of the said society. There is a vacant plot adjacent to the society. There was encroachment over the said plot. Some people who had encroached upon the said property had filed a civil suit. The said civil suit was decided in the year 2004. The learned Civil Court had held that the society had exclusive title over the said property. The lawful ownership and possession of the soicety was upheld and the plaintiffs were perpetually restrained from obstructing and disturbing the possession over the said plot. The applicant herein had filed an application to the Municipal Authorities drawing their attention to the encroachment of the said people. It was also disputed that despite of dismissal of the suit the people continued to trespass over the said vacant plot. According to the learned Counsel for the applicant, the applicant is being prosecuted, without there being any cogent ground for prosecution only to satisfy the vendetta of the present complainant for bringing it to the notice of the authority that there is trespass over the vacant plot. Prima facie taking into consideration the background of the case, the contention of the Learned Counsel for the applicant needs to be taken into consideration. Applicant had no reason to know the caste of the people, who had encroached upon the said plot. That the said people were in unlawful possession over the said plot.

5. Learned APP submits that by virtue of embargo under section 18 of the said Act, the applicant herein is not entitled to the protection under section 438 of Cr.P.C. This court can not be oblivious of the fact that although there is an embargo under section 18 of the said Act it is necessary to see that the said provision is not abused and misused for disturbing the social equilibrium and therefore, the case has to be considered from the point of view of the background of the case and the circumstances in which such allegations are made. In view of this the applicant deserves grant of pre-arrest bail. It is made clear that the observations are prima facie in nature and shall not be taken into consideration for the purpose of quashing of FIR and discharge application or at the time of trial, as the observations are restricted to an application under section 438 of Cr.P.C. to ascertain as to whether custodial interrogation is imperative.

ORDER

- i) The Application is allowed.
- ii) In the event of arrest, the applicant be enlarged on bail on furnishing PR bond in a sum of Rs.15,000/- with one or more solvent sureties in the like amount.
- iii) The applicant shall co-operate with the Investigating Agency and report to the Investigating Officer as and when called over after issue of notice under section 160 of Cr.P.C.
- iv) The application is allowed in above terms and disposed of.

(SMT.SADHANA S.JADHAV, J.)