

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1966 OF 2015

Shri Kundlik Sonba Kale & Ors.	...	Applicants
Vs.		
The State of Maharashtra	...	Respondent

Mr. Kuldeep S. Patil, Adv. i/b. Prashant Hagare, Adv. for the applicants.
Mrs. R.M. Gadhvi, APP for the State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 4th January, 2016.

P.C. :

1. This is an application for anticipatory bail filed by the aforesaid applicants apprehending their arrest in Crime No.229 of 2015 registered at Baramati Taluka Police Station for offences punishable under Sections 358, 452, 323 and 504 read with 34 of IPC and 3(1) 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Mr. Patil, the learned counsel for the applicant submitted that the FIR which was lodged after inordinate delay, does not disclose the ingredients of offence under Section 3(1) 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

He has submitted that Section 3 (1) 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was added subsequently on 28th September, 2015 while the FIR was registered on 15th July, 2015. He therefore submits that the bar of section 18 of the Act is not attracted. He further submits that the nature of allegation does not warrant custodial interrogation.

3. Mrs. Gadhavi, the learned APP for State submits that the supplementary statement the complainant reveals that the applicant had abused the complainant with reference to his caste. The allegations prima facie disclose commission of offence under section Section 3 (1) 10 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. I have perused the records and considered the submissions advanced by the learned counsel for the applicants and the learned APP for the State. 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. In the case of *Vilas Pandurang Pawar Vs. State of Maharashtra, 2012 (4) Bom. C.R. (Cri) 408* it is 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.

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 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.”

5. In the instant case, the FIR dated 15th July, 2015 was lodged in respect of the incident of 6th July, 2015. The complainant Ananda Shivaji Bhosale had alleged that on 6th July, 2015 at about 4 pm while he was alone in his residential house the applicants had entered his house and had abused him and assaulted him by means of a sickle. The said FIR does not prima facie disclose the ingredients of Section 3(1) 10 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

6. The records reveal that the complainant had given a supplementary statement on 28th September, 2015, wherein he has given an entire different version in order to make out a case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The subsequent allegations made in the supplementary statement are prima facie inconsistent and are at variance with the allegations made in the complaint cannot be considered for attracting the bar of Section 18 of the Act.

7. The nature of the allegations do not justify custodial interrogation. The applicants are the permanent resident of Baramati and there are no chances of the applicants absconding and thwarting the course of justice. There is nothing on record to show that the applicants have criminal antecedents.

8. Under these facts and circumstances the application is allowed under the following terms and conditions.

1. In the event of arrest of the applicants in Crime No.229 of 2015 registered at Baramati Taluka Police Station, the applicants shall be released on bail bond of Rs.20,000/- (Rupees Twenty

Thousand Only) each with one or two sureties in the like amount to the satisfaction of the JMFC, Baramati.

2. The applicants shall report to investigating officer for 4 days from the date of the receipt of the order and further as and when required by the investigating officer for the purpose of the interrogation.
3. The applicants shall not tamper with the evidence or influence complainant and witnesses in any manner.

(ANUJA PRABHUDESSAI, J.)