

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

ANTICIPATORY BAIL APPLICATION NO.43 OF 2017

Annasaheb Shrimant Kadam Applicant

versus

The State of Maharashtra ... Respondent

Mr.Anil Shitole, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the State/Respondent.

PSI Mr.R.R.Gondhe (Nagpur Police Station/present at Velapur Police Station, Solapur)

**CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 10th JANUARY, 2017.**

P.C. :

1. This application is moved for pre-arrest bail by the applicant/accused. The applicant accused is facing charges u/s 323, 504 and 506 of Indian Penal Code r/w 3(1)(10) of the Schedule Cast and the Schedule Tribes (Prevention of Atrocities), Act 1989 and 4(1) (r) (s) of the Amended Act, 2015. It is the case of complainant that she belongs to Hindu Matang Cast, which is a scheduled cast under the constitution. She and her husband are the labourers. They work as the labourers in the field of one Anil

Dinkar Babar. Adjacent to that field the applicant/accused is having his agricultural land. On 26/12/2016 at 11.00 a.m. the accused found that the cattle of the complainant had eaten the pomegranate plants of the accused and therefore he shouted at the complainant and her husband. He abused them by cast and assaulted the complainant and her husband and threatened that he would burn their hut. The incident was seen by Seema Babar and Suananda Babar and thereafter information was given to the police and offence was registered at 21.30 hours on the same day. The learned counsel for the applicant/accused has submitted that on the same day at 13.00 hours one N.C. bearing No.652/16 was registered u/s 323, 504 and 506 of IPC at Velapur Police Station by the husband of the complainant. However, in the said N.C. no allegations under the S.C.S.T. Act were made. Only after consulting with the other persons and the political leaders in the village, subsequently present FIR was registered, wherein the utterances of cast are deliberately mentioned. He submitted that under such circumstances he be granted pre-arrest bail.

2. The learned prosecutor opposed the application and

submitted that no pre-arrest bail be granted to the applicant/accused as there is a bar u/s 18 of the S.C.S.T. Act to grant pre-arrest bail. The learned prosecutor obtained instructions from the concerned officer, who is present in the Court and pointed out to the statements of Seema Babar and Sunanda Babar recorded on 27/12/2012, wherein those two ladies have confirmed the utterances of cast by the applicant/accused.

3. This is the first date of the application. However, as the concerned officer is present alongwith all the papers, I decide this application finally.

4. Section 18 of the S.C. & S.T. Act puts a bar to grant pre-arrest bail u/s 438 of Cr.P.C. However, the facts of each case are different, wherein the bar is to be made applicable or where it can be lifted at this stage. Prima facie allegations made and the complaint lodged should inspire confidence that the offence of utterances or any other offence under S.C. & S.T. Act must have taken place.

5. Perused the contents of N.C.No.652/16, which is admittedly registered at around 01.00 p.m. i.e. much prior to the FIR, which was registered at 21.30 hours on the same day. In the N.C. registered u/s 323, 504 and 506 of IPC by the husband of the complainant, who was also present at the spot and was assaulted by the applicant/accused. However, no allegations of committing offence under S.C. & S.T. Act were made. Considering this N.C., prima facie, I am of the view that the bar u/s 18 of the S.C. & S.T. Act is not to be invoked. Hence I allow this application as follows:

ORDER

- (i) In the event of arrest, the applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (ii) The applicant/accused shall cooperate with the Investigating Officer and attend the concerned police station twice in a week on every Friday and Monday between 06.00 a.m. to 08.00 p.m. for one month.
- (iii) The applicant/accused shall not tamper with the evidence or pressurize the complainant.

(iv) The applicant/accused shall not hereafter indulge into any criminal activity with the complainant or her family members of the witnesses in any manner.

6. The application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)