

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**ANTICIPATORY BAIL APPLICATION NO.1260 OF 2022
WITH APPLN/3228/2022 IN ABA/1260/2022**

**SHANKAR BABA PATHWE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicants : Mr. Sachin G. Joshi
APP for Respondent – State : Mr. A. V. Deshmukh

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 18th OCTOBER, 2022

PER COURT :

1. The entire family of applicants has been arrayed as accused in Crime No.0346/2022, registered with Akole Police Station, Ahmednagar, for offences punishable under Sections 191, 196, 197, 198, 199, 200 and 420 of the Indian Penal Code and Section 7(1) of Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. It is alleged that applicants while obtaining Scheduled Tribe Certificate from Sub Divisional Officer, Sangamner, have produced forged documents. The said aspect was revealed during the course of tribe validation and it was revealed that tribe certificate was obtained fraudulently.

2. Learned advocate for applicants by relying on *Vilas*

Rambhau Majrikar Vs. State of Maharashtra, 2015 ALL MR(Cri) 4025, submits that Section 11(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, does not contemplate lodging of FIR and only private complaint can be filed by a scrutiny committee or its authorized officer. Further submission is that applicant No.5 has already challenged decision of the scrutiny committee by filing Writ Petition No.9381/2022 in which learned Division Bench of this Court issued notice on 10/08/2022 and ordered that "*Till the next date, criminal proceedings may not be filed against the petitioner pursuant to the impugned judgment*". He submits that prior to passing of the said order, the FIR in question was lodged on 22/07/2022. He, therefore, submits that, since FIR itself is not tenable in view of judgment of the learned Division Bench of this Court, applicants deserve protection.

3. Learned Assistant Public Prosecutor, on the other hand, strenuously opposed the prayer of applicants contending that applicants have obtained tribe certificate from Sub Divisional Officer by producing forged documents and have played fraud in obtaining the certificate. The same is disclosed during tribe claim inquiry before the scrutiny committee and therefore, scrutiny committee

directed lodging of complaint.

4. In *Vilas Rambhau Majrikar* (supra), the learned Division Bench of this Court has held:-

"13.This clearly means that what is contemplated is filing of a private case by a Scrutiny Committee or its authorized officer in accordance with Chapter XV of the Code of Criminal Procedure and it does not contemplate filing of police case in accordance with Chapter XII of the Code of Criminal Procedure.

15.That means what is contemplated by Section 11(2) is filing of a private complaint by the Scrutiny Committee or its authorized officer before the Court who could then take cognizance. In other words, filing of a police case is not contemplated by the aforesaid provision. "

5. In the light of above ratio, *prima facie* the FIR appears to be not tenable. Admittedly, decision of the scrutiny committee is already under challenge before the learned Division Bench of this Court. In that view of the matter, I am inclined to allow the application.

6. The anticipatory bail application is allowed, by confirming interim order passed by this Court on 26/09/2022.

7. Accordingly, criminal application also stands disposed of.

(NITIN B. SURYAWANSHI, J.)