

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

ANTICIPATORY BAIL APPLICATION NO. 1223 OF 2023

Nirman Umesh Singh

Age : 43 Years, Occu. : Business,

Residing at : Room No. 72/12/26,

Worli, Jijamata Nagar, Mumbai-18.

...Applicant

vs.

1. The State of Maharashtra
[Through Sr. Police Inspector,
Virar Police Station]

2. Sonali Naresh Govari
Age : 36 Years, Occu. Nil,
Residing at : Aminabai Chawl,
Mitbhav Wadi, Near Jivdani Plaza,
Manvelpada, Virar East,
Taluka : Vasai, District : Palghar.

...Respondents

Ms.Kusum Pandey – Advocate for Applicant.

Mr.H.J.Dedhia – APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 4th MAY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant.
2. There is a preliminary objection taken by learned APP that as

per the provisions of Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [“SCST Act”] invoked, the provisions of Section 438 of the Code of Criminal Procedure, 1973 [“Cr.PC.”] cannot be invoked. The Court of Additional Sessions Judge – Vasai as per the order dated 6th April, 2023 confirmed the interim protection to Applicant No.2, whereas, interim protection granted to Applicant No.1 i.e. present Applicant was vacated.

3. There is also contention raised on behalf of the Applicant that the offences are not punishable with imprisonment above seven years and as such, the provisions of Section 41-A of the Code of Criminal Procedure, 1973 [“Cr.PC.”] are applicable.

4. Learned Advocate for the Applicant intends to prefer an Appeal against the order dated 6th April, 2023 passed by the Court of Additional Sessions Judge – Vasai. It is true that Section 41-A of Cr.PC., insists issuance of a notice and the only criteria is the punishment. It nowhere says that those offences must be under Indian Penal Code, 1860 [“IPC”].

5. Learned APP undertakes to issue a notice under Section 41-A of Cr.PC.

6. In view of that, Application is disposed of. Applicant is at liberty to prefer an Appeal against the said order.

[S. M. MODAK, J.]