

Nikita

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

ANTICIPATORY BAIL APPLICATION NO.1782 OF 2024

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Rajashri Audumbar Koli

... Applicant

Versus

State of Maharashtra

... Respondent

Mr. Ashok B. Tajane a/w Yuvraj A. Tajane a/w
Ms. Kavita P. Shinde for the Applicant.

Mr. Mayur Sonavane APP for the State.

Mr. Nitin Shinde, PSI, Sadar Bazar Police Station,
Solapur Cirty.

CORAM : MANISH PITALE, J.

DATED : 10th JULY, 2024.

P.C.:

1. Heard Mr. Ashok Tajane for the Applicant and Mr. Mayur Sonavane, learned APP for the State.
2. In the present case the applicant has approached this Court apprehending arrest in connection with C.R. No.359 of 2024 dated 20th May 2024 registered at Sadar Bazar Police Station, District Solapur for offences punishable under Sections 420, 467, 468, 471

of the IPC.

3. The informant in the present case is the Nayab Tahsildar who has approached the police on a direction issued by the Tehsildar. The said direction was issued on the basis of an order passed by the Caste Scrutiny Committee while rejecting the caste claim of the applicant.

4. Learned counsel for the applicant submits that in the cases where criminal proceedings are to be undertaken for having allegedly procured a forged caste certificate, the provisions 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 (hereinafter referred to as “the said Act”) are relevant. Section 11 of the said Act pertains to offences and penalties. Section 11(2) of the said Act specifies that no court can take cognizance of an offence punishable under the said Section except upon a complaint in writing by the Scrutiny Committee or by any other Officer duly authorized by the Scrutiny Committee for that purpose. He placed reliance on the judgment passed by the Single Bench of this Court in the case of **Safa Khwaja**

Shaikh Vs. The State of Maharashtra on 5th August 2019 passed in Criminal Writ Petition No.104 of 2017 and judgment of the Division Bench of this Court in the case of **Vilas S/o Rambhau Majrikar Vs. State of Maharashtra**, dated 22nd June 2015, passed in Criminal Application No.1173 of 2010. It is submitted that in such circumstances, only a private complaint is maintainable and that FIR cannot be registered. On this basis it is submitted that the very registration of the FIR is under shadow of doubt and hence, this Court may consider granting relief in the present application.

5. The Learned APP is unable to dispute the position of law laid down in the said judgments of this Court and he submits that the record shows that the FIR was directly registered on the basis of the information given to the police by the Nayab Tehsildar.

6. Perusal of the aforesaid judgments of this Court shows that when criminal proceedings are to be initiated under Section 11 of the said Act, in the light of the stipulation under Section 11(2) thereof, only a private complaint can be lodged by the Scrutiny Committee or an Officer authorized by the Scrutiny Committee and that filing of a police case is not contemplated in the said Act. This position of law is specifically clarified in the judgment of

Division Bench of this Court in the case of **Vilas S/o Rambhau Majrikar Vs. State of Maharashtra** (supra) and followed by the learned Judge of this Court in the judgment of **Safa Khwaja Shaikh Vs. The State of Maharashtra** (supra). The relevant portion of the judgment of the Division Bench in the case of **Vilas S/o Rambhau Majrikar Vs. State of Maharashtra** (supra) reads as follows:

“15] By merely making the offence under this Section 11 cognizable and non-bailable, the position would not change and the operation and effect of Section 11(2) does not get obliterated or non operational. We are therefore of the opinion that even though offences have been made cognizable or non-bailable, Section 11(2) must be held to operate with full force. 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.

16] In the light of the above, discussion with reference to question no.1, therefore, we are of the considered opinion that filing of a police case by registration of F.I.R. before the criminal Court is not contemplated and what is contemplated is filing of a private complaint by a Scrutiny Committee or its authorized officer in accordance with Chapter XV of the Code of Criminal Procedure. We, therefore, answer question no.1 accordingly and hold that filing of final report by the police under Section 173 of the Code of Criminal Procedure by way of chargesheet is illegal and contrary to the provisions of law as aforesaid.”

7. In view of the above, registration of FIR itself is under a shadow of doubt. Therefore, the applicant has made out a prima facie case in his favour and the application deserves to be allowed.

8. In view of the above, the application is allowed in the following terms:

In the event the applicant is arrested in connection with C.R.No. 359 of 2024 registered at Sadar Bazar Police Station, District Solapur, he shall be released on bail furnishing PR bond of ₹ 10,000/- and one or two sureties of the like amount.

9. The anticipatory bail application is disposed of.

(MANISH PITALE, J.)