

AGK

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

ATUL
GANESH
KULKARNI

ANTICIPATORY BAIL APPLICATION NO.3386 OF 2025

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Mahesh Ananta Kene

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Sudeep Pasbola, Senior Advocate i/by Mr. Satyaram K. Gaud, Rohin Chauhan and Rajan Gurnani for the applicant.

Mrs. Shilpa G. Talhar, APP for respondent No.1-State.

Mr. Amit Katarnaware for respondent No.2.

Ms. Asha Nikam, PSI, Khadakpada Police Station, Kalyan, is present.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 24, 2025

P.C.:

1. The applicant apprehends arrest in Crime Register No. 220 of 2023 registered with Khadakpada Police Station for offences punishable under Sections 363, 324, 355, 325, 504, 506, 143, 147, 149 read with Section 34 of the Indian Penal Code, 1860, Sections 3(1)(d), 3(1)(a), 3(1)(r), 3(1)(s), 3(1)(u) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and Section 12 of the Protection of Children from Sexual Offences Act, 2012. He has, therefore, approached this Court seeking pre arrest bail under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. The prosecution case is that on 18 May 2023 at about 11.55 p.m., after dinner, the victim was returning home and was browsing his Instagram account. He noticed a video post relating to the festival of deity Aai Ekvira, uploaded from an Aagri Koli user ID. The post itself was not objectionable. However, certain comments on the post were found objectionable by the victim. He replied from his personal account and requested deletion of those comments. Instead of deleting them, abusive replies were sent to him. On 19 May 2023 at about 1.00 p.m., the victim sent messages to the Instagram accounts of the persons who had made objectionable comments, asking them to tender an apology by making and posting an apology video. The complainant agreed to apologise but did not respond to further messages seeking his address.

3. On the same day, that is 19 May 2023, at about 4.20 p.m., while the victim was working at his cake shop at Kalyan West, four to five unknown persons came to the shop, confirmed the presence of the victim, and left. Within about ten minutes, at around 4.30 p.m., a mob of about twenty to twenty five persons entered the shop. They compelled the victim to apologise for the alleged objectionable comments by recording an apology video and thereafter left. The FIR, however, states that the victim was later called near the Atali Vadvali jungle area, where again a mob of twenty to twenty five persons assaulted him, tore his clothes, and forced him to walk up to the Aai Ekvira temple. He was made to rub his nose at the temple while apologising. During this incident, some persons recorded videos and went live on social media. It is

further alleged that accused Nikita informed the sister of the victim. When she arrived, the victim and his sister Mansi went to Khadakpada Police Station and lodged the FIR.

4. Mr. Pasbola, learned Senior Advocate appearing for the applicant submitted that the applicant is not named in the FIR. According to him, the informant learnt the names of the alleged accused from the police. The FIR was lodged on 19 May 2023. The co accused have already been released on bail and the charge sheet has been filed against them. It is submitted that neither the name nor the specific role of the present applicant finds place in the FIR. More than two and a half years have elapsed and the applicant was never arrested. He was not absconding, as alleged. He had approached this Court for quashing of the FIR, which was withdrawn with liberty to pursue appropriate remedy of discharge. It is further argued that though provisions of the SC ST Act are invoked, there is no prima facie material to attract Sections 3(1)(d), 3(1)(a), 3(1)(r), 3(1)(s), 3(1)(u) and 3(2)(va) against the applicant, as there was no intention to humiliate. It is contended that digital evidence such as CCTV footage and mobile recordings do not implicate the applicant. Since the charge sheet is already filed against other accused and there is nothing to be recovered, custodial interrogation is unnecessary. The applicant is willing to cooperate with the investigation. It is submitted that the bar under Section 18 of the SC ST Act is not absolute and anticipatory bail can be granted in appropriate cases. Reliance is placed on the decisions in *Shajan Skaria v. State of Kerala, Criminal Appeal No.2622 of 2024* and *Hitesh Verma v. State of Uttarakhand* in

Criminal Appeal No. 707 of 2020. On these grounds, grant of anticipatory bail is sought.

5. Ms. Talhar, Learned Additional Public Prosecutor opposed the application. He submitted that the provisions of the SC ST Act squarely apply. The Instagram ID of the victim is “Jai Bhim”, which clearly indicates his caste, and the applicant had knowledge that the victim belongs to the Scheduled Caste community. During investigation, the role of the present applicant has emerged. He was present at the spot and was recording the incident. Independent witnesses corroborate his presence and conduct. In the statement recorded under Section 164 of the Code of Criminal Procedure, the victim has specifically attributed a role to the applicant. The applicant did not cooperate with the investigation. The investigating agency was not informed about the quashing petition filed by him. That petition was rejected and interim protection against arrest was also refused. It is further submitted that the mobile phone of the applicant is required to be recovered. In view of the statutory bar under Section 18 of the SC ST Act and the facts on record, the application deserves rejection.

6. Mr. Katarnaware, learned Advocate for the victim submitted that the applicant was an active member of the unlawful assembly and shared a common intention to insult and commit atrocities against the victim, who belongs to the Scheduled Caste community. The applicant had full knowledge of the caste of the victim. According to him, the incident occurred in stages. First, some persons went to the shop and left. They returned again, called the victim out, and compelled him to apologise. Thereafter,

they again returned, took the victim away, assaulted him, stripped him except for his underwear, paraded him in public, took him to a jungle area, and forced him to lick feet and press his nose before the deity. The statement of the police constable who visited the spot shows that the applicant was videographing the incident on his mobile phone. Statements of the two sisters of the victim show that the applicant assaulted the victim along with other co accused. A co accused having a similar role was denied anticipatory bail by the Trial Court as well as by this Court. The applicant remained absconding for more than two years, which led to initiation of proclamation proceedings. Only thereafter did he approach this Court for quashing of the FIR, which was rejected along with refusal of interim protection. There is a clear prima facie case against the applicant and the provisions of the SC ST Act are attracted. In view of the bar under Section 18 of the Act, the application is not maintainable and deserves to be rejected.

7. The first question that arises for consideration is whether, on a plain and initial reading of the FIR and the material referred to in it, the provisions of the SC ST Act are attracted. If the answer is in the affirmative, Section 18 of the Act comes into operation and bars the grant of anticipatory bail. If, however, the allegations do not disclose a prima facie offence under the SC ST Act, the bar under Section 18 does not apply, and the Court can then consider the request for anticipatory bail on ordinary principles governing such relief. Therefore, the entire exercise at this stage revolves around a prima facie assessment and nothing more.

8. The law on this aspect is well settled. Section 18 of the SC ST Act is not a mechanical or blanket prohibition in every case where the Act is mentioned in the FIR. The Court is duty bound to first examine whether the complaint, taken at its face value, makes out the basic ingredients of an offence under the Act. If those ingredients are absent, the statutory bar does not operate and the Court is not powerless to grant pre arrest protection in an appropriate case. At the same time, the Court must exercise restraint. It cannot weigh evidence, test the truthfulness of allegations, or conduct a mini trial. The inquiry is limited. It is only to see whether the allegations, as they stand, disclose an offence under the SC ST Act.

9. The expression *prima facie* has a specific meaning in this context. It does not mean proof beyond doubt, nor does it require detailed scrutiny of contradictions or defences. *Prima facie* simply means that from the complaint and the material referred to in it, the essential legal elements of the offence appear to exist. The Court must identify the statutory ingredients and then see whether the factual allegations, if assumed to be true for the time being, satisfy those ingredients. In relation to Section 3(1)(r) of the SC ST Act, the law requires four basic elements. First, the accused must not belong to a Scheduled Caste or Scheduled Tribe. Second, there must be an intentional act of insult or intimidation directed against a member of SC or ST. Third, such act must be with the specific intention to humiliate the victim because of his caste identity. Fourth, the act must occur in a place within public view. Unless these elements appear on the face of the complaint, the

offence is not made out even at a prima facie level.

10. The requirement of “intent to humiliate” deserves special emphasis. Every insult or quarrel involving a person belonging to SC or ST does not automatically attract the SC ST Act. The law draws a clear distinction between a personal dispute and caste based humiliation. The humiliation contemplated by the Act is not a casual or routine insult. It is a deeper form of degradation, rooted in caste identity, which seeks to lower the dignity of the victim in the eyes of society because of his social status. Acts that echo historical practices of oppression, public shaming, or enforced subjugation fall within this expression. Therefore, the Court must carefully examine whether the conduct alleged is directed at the person merely as an individual, or whether it is aimed at humiliating him as a member of a Scheduled Caste or Scheduled Tribe. This distinction forms the heart of the prima facie test and guides the Court in deciding whether the statutory bar under Section 18 is attracted. (See. *Shajan Skaria v. State of Kerala, Criminal Appeal No.2622 of 2024*)

11. The FIR narrates a series of events which, when read as a whole, disclose a continuing course of conduct and not an isolated or accidental incident. According to the FIR, certain persons first came to the shop where the victim was working and verified his presence. They then left, only to return shortly thereafter with a larger group. The victim was compelled to apologise by recording a video. The matter did not end there. He was thereafter taken to a secluded jungle area, where a mob allegedly assaulted him, tore his clothes, paraded him, and forced him to walk to the temple. At

the temple, he was made to rub his nose and to lick feet as an act of public apology. It is further alleged that during this entire episode, some persons were recording videos and even streaming the incident live. These allegations, on their face, describe acts of severe degradation and public shaming.

12. The FIR further states that the victim's Instagram handle is "Jai Bhim", which is commonly understood as an assertion of Scheduled Caste identity. The sisters of the victim and independent witnesses are stated to have identified the present applicant as being present at the scene, recording the incident and actively participating in the assault. The statement of the victim recorded under Section 164 also attributes a specific role to the applicant. At this stage, the Court is not required to test the truth of these statements. It is sufficient to note that such material is referred to in the FIR and the investigation record.

13. When these allegations are examined on a plain reading and tested against the statutory requirements, the nature of the conduct becomes clear. The acts complained of are not limited to exchange of words or a private altercation. They involve physical violence, stripping of dignity, forced acts of submission, and public exhibition of humiliation. The recording and circulation of videos further add to the public character of the humiliation. Such acts, by their very nature, are intended to disgrace and lower the victim in the eyes of society.

14. The allegation that the assailants were aware of the victim's caste is not an assumption without basis. The Instagram handle

“Jai Bhim”, the prior exchange on social media, and the manner in which the victim was publicly shamed before a deity, all support an inference, at least at a prima facie level, that the humiliation was directed at him as a member of a Scheduled Caste. On this prima facie appreciation, the element of caste linked humiliation appears to be present.

15. Therefore, accepting the FIR and the materials referred to therein at face value, the allegations satisfy the basic ingredients of Section 3(1)(r) of the SC ST Act and allied provisions. The test laid down by the Supreme Court, including in the decision of *Shajan Skaria*, requires the Court to see whether public humiliation with caste based intent is disclosed on the face of the record. Applying that test, the allegations in the present case cross the prima facie threshold. This conclusion is sufficient at this stage and leaves no room for further inquiry while considering the prayer for anticipatory bail.

16. The submissions made on behalf of the applicant deserve careful consideration. The applicant points out that his name does not find place in the FIR. He relies on the fact that co accused have been granted bail. He emphasizes that for more than two and a half years no arrest was effected. He further submits that the digital material does not clearly implicate him and that the essential requirement of intention to humiliate, which is central to the SC ST Act, is absent. He has also placed reliance on judgments which hold that anticipatory bail can be granted where no prima facie offence under the SC ST Act is made out. These submissions are not to be brushed aside. They are relevant factors and normally

would carry weight while considering a prayer for pre arrest bail.

17. At this stage, the Court is not expected to conduct a comparative evaluation of defence and prosecution versions. The exercise is limited to seeing whether there is prima facie material attracting the provisions of the SC ST Act. When the FIR, the statements of witnesses, and the material referred to therein collectively point towards active participation in an incident involving public and caste linked humiliation, the statutory bar cannot be lightly ignored. The grant of bail to other accused does not automatically dilute the material against the present applicant, particularly when a specific role is attributed to him. Similarly, mere passage of time without arrest, by itself, does not confer a right to anticipatory bail when the allegations disclose serious offences and prima facie material exists.

18. The procedural history of the matter also assumes significance. The applicant had earlier approached this Court seeking quashing of the FIR. That petition was rejected and interim protection from arrest was expressly refused. The prosecution asserts that the applicant was not available for investigation and that proclamation proceedings were initiated. The investigating agency has also stated that recovery of the applicant's mobile phone is necessary for a proper investigation. Though the applicant now expresses willingness to cooperate, prior conduct cannot be ignored. When an accused keeps himself away from the process of law for a considerable period, such conduct weakens his claim for discretionary relief in the nature of pre arrest bail.

19. The Court is conscious that personal liberty is a valuable right and deserves protection. At the same time, the SC ST Act is a special legislation enacted to protect members of vulnerable communities from humiliation, intimidation, and atrocities. The Court must strike a careful balance between these competing interests. Anticipatory bail is permissible in cases where the allegations do not disclose a prima facie offence under the Act. Conversely, where on a plain reading of the complaint the ingredients of the offence appear to be satisfied, the bar under Section 18 comes into play and the Court must respect the legislative mandate.

20. Applying these principles to the present case, I am satisfied that the FIR and the material referred to therein disclose, at least prima facie, the commission of offences under the SC ST Act. The applicant has not demonstrated any exceptional circumstances that would justify lifting the statutory bar. Consequently, the bar under Section 18 operates, and the application for pre arrest bail cannot be entertained. The application, therefore, deserves to be rejected.

21. Hence, the anticipatory bail application is rejected.

(AMIT BORKAR, J.)