

MHTH230019862021



ORDER BELOW EXH. NO.4 IN A.B.A. NO.1238/2021

1. Rohit Motiram Yelvankar
 2. Sneha Rohit Yelvankar
 3. Sandeep Shankar Pawar
 4. Rakesh Motiram Yelvankar
 5. Chandrakant Laxman Chawan
- v. The State

This application is filed by the applicants for anticipatory bail in C.R. No. 993/2021 registered at Virar Police Station for the offence punishable under sections 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2] Heard Ld. Advocate for the applicants. Perused the grounds mentioned in the bail application. Also perused the documents filed along with the bail application.

3] Heard Ld. APP who has *inter alia* submitted that the application needs to be rejected. Perused the grounds advanced for the opposition by concerned police station *vide* the police say report.

4] I have perused the FIR. It is the allegations against the present applicants that on 22/10/2021 at about 9.30 pm the informant got a push from the applicant No. 2 when she was passing through the passage of the building. On this, it is alleged, by the informant that the applicant No. 2 suddenly

hurled abused at the informant. The husband (applicant No. 1) of the applicant No. 2 came out of his house and he uttered certain words which were perceived by the informant as an derogatory reference to her caste. The brother (applicant No. 4) of the applicant No. 1 also abused the informant and her daughter-in-law. At the time, it is alleged that the applicants No. 3 and 5 also came over there and started caste-abusing the informant and even threatened the informant not to stay in that building.

5] Ld Advocate for the applicants would submit that the entire FIR is false. No verbal altercation or filthy language about caste had been used by any of the applicants. The script of video recording done in one mobile handset shows that no caste-abusive words were used by the applicants. Ld Advocate submits that the applicant No. 5 was in the Churni Road area until about 8.00 pm. The alleged incident had occurred at about 9.30 pm on the relevant day. The applicant No. 5, according to his Ld Advocate, has a strong plea of *alibi*. He further submits that nothing is to be recovered from the applicants and hence police custody is not necessary.

6] Ld Advocate has relied on following authorities.

1. In ***Sarabjit Kaur v. State of Himachal Pradesh, Cr.MP(M) 287 of 2020 Dtd. 06/3/2020***, the Hon'ble High Court of Himachal Pradesh has held that when *prima facie* the court notices that the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been used as a tool to send

people in custody, then in such cases, it shall be prudent, proper and legal to grant *ad interim* bail.

It can be commented that the present application is being dealt with for final relief and not interim relief.

2. In ***Union of India v. State of Maharashtra and Ors, Criminal Appeal No. 416/2018 Dtd. 01/10/2019***, the Hon'ble Supreme Court has held that there is no absolute bar against grant of anticipatory bail in cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 if no *prima facie* case is made out or where on judicial scrutiny the complaint is found to be *prima facie mala fide*.

7] Ld APP would submit that the bar of Sections 18 and 18-A comes into play thereby making this application untenable. She further submits that the evidence in the nature of the script of the footage in the pen-drive cannot be accepted at the bail stage since it is struck by the provision of Sec. 65-B of the Evidence Act. She further submits that aforesaid judgments filed by the Ld Advocate for the applicants are not applicable.

8] The informant was kept present by the State/Ld APP in pursuance of Sec. 15-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. As per law, the informant was given opportunity to be heard. The informant submitted that the contents of the FIR are true and correct and that she is suffering at the hands of the applicants

since last 4-5 years. The informant also strongly put forth that the applicants in no condition should have insulted her caste.

9] My observation is like this. In cases of caste-abuse very thorough investigation is needed. In the present case from the contents of the FIR, the arguments of the Ld APP and the submissions by the informant in person established *prima facie* case against the applicants. The defence of alibi and other evidence of video recording etc can be raised at the time of the trial. At present what is needed is very proper and serious investigation. Police custody is meant not only for recovery of physical objects but it is meant for eliciting vital information from the accused for the purpose of proper investigation. Therefore, considering the object of the Act, I hold that the bar of Sec. 18 has become applicable to the facts of the present case. Therefore, they are not entitled to anticipatory bail.

Resultantly, I pass the following Order.

ORDER

The anticipatory bail application stands rejected.

sd/-

Place: Vasai

(Sudhiir M. Deshpande)

Date : 13/11/2021

Additional Sessions Judge, Vasai

Certificate

“I affirm that the contents of this P.D.F. file Judgment / Order are same word for word as per the original Judgment / Order.”

Name of the affirming : Smt P.H. Shirolkar, Steno Steno	
Date of pronouncement : 13/11/2021	
Signed by the Presiding : 13/11/2021 Officer on	
Uploaded on : 13/11/2021	