

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

CRIMINAL APPEAL NO. 9 OF 2019

1. Nitin S/o. Sampatrao Maske,
Age: 29 years, Occu. Education,

2. Baliram S/o. Ganesh Raut,
Age: 23 years, Occu. Education,

Both R/o. Malegaon Dudhana,
Tal. Jintur, Dist-Parbhani.

...APPELLANTS

VERSUS

1. The State of Maharashtra,
Through Police Station Bori,
Tal. Jintur, Dist. Parbhani

2. Nilawatibai Maroti Jogdand,
Age: 60 years, Occu.: Malegaon,
R/o. Malegaon Dudhana,
Tal. Jintur, Dist-Parbhani.

...RESPONDENTS

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Mr. S. B. Ghatol-Patil, Advocate for appellants
Mr. K. D. Mundhe, APP for respondent No. 1-State
Mr. S. A. Dhengale, Advocate for respondent No. 2

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CORAM : K.K. SONAWANE, J.

**RESERVED ON : 21st FEBRUARY, 2019.
PRONOUNCED ON : 07th MARCH, 2019.**

JUDGMENT :-

Heard. **Admit.** The appeal is taken up for final
hearing on merit with the consent of both parties.

2. Present appeal is directed against the impugned order of rebuffing the relief of pre-arrest bail of the appellants in Crime No. 187 of 2018 registered with Bori Police Station, Taluka Jintur, District Parbhani under Sections 354-A, 504, 506 of the Indian Penal Code (IPC) and Section 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter, referred to as "Act of 1989" for the sake or brevity). The appellants preferred present appeal by invoking remedy under Section 14-A(2) of the Act of 1989.

3. The prosecution case in nut-shell is that, on 19-12-2018, the complainant Nilawatibai Maroti Jogdand visited the Police of Bori Police Station, Taluka Jintur, District Parbhani, and filed report that on 17-12-2018 in the night at about 9.15 p.m. she accompanied with her younger daughter Laxmi after enjoying the meal, both went to bed. But, somebody else knocked the chain of door of her house. She opened the door and saw that appellants Nitin Sampatrao Maske and Baliram Ganesh Raut were standing in front of door. Complainant asked about the cause of their arrival at her house. It has been alleged that appellant Baliram with ill-intention caught her hand and made demand for physical relation. But, the complainant refused to yield their overtures. The appellants hurled abuses on her caste saying "*Mangte*". Meanwhile, younger daughter Laxmi woke-up and came there and on seeing the daughter, appellants went away.

4. Pursuant to FIR of complainant Nilawatibai Jogdand, Police of Bori Police Station registered the Crime No. 187 of 2018 for the offence punishable under Sections 354-A, 504, 506 of the IPC and Section 3(1)(w)(i)(ii) of the Act of 1989, and set the penal law in motion. The appellants, apprehending their arrest in the present crime, filed the application before the learned Additional Sessions Judge, Parbhani, for their pre-arrest bail bearing Criminal Misc. Application No. 01 of 2019 under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.). But, learned Additional Sessions Judge found reluctant to nod in favour of applicants-appellants of their pre-arrest bail by exercising powers under Section 438 of the Cr.P.C. Learned trial Court held that in view of statutory bar under Sections 18 and 18-A of the Act of 1989, Sessions Court has no jurisdiction to entertain the application for anticipatory bail. Eventually, learned Additional Sessions Judge rejected the application of appellants for anticipatory bail and passed the impugned order, the validity, propriety and correctness of which is agitated in the present appeal.

5. Mr. Ghatol-Patil, learned counsel for the appellants vehemently submitted that the appellants have not committed any crime as alleged by the prosecution, but they are falsely implicated in this case. According to the learned counsel, complainant- first informant started construction of toilet at her

house and she was in a need of bullock-cart for carrying sand from the river bed. But, appellants did not allow for the same as excavation of the sand at Dudhana river was strictly prohibited by revenue personnel. The complainant became furious and she had given threat to implicate appellants by filing complaint under the Atrocities Act. The family members of the appellants also approached to the Bori Police Station on 19-12-2018 and requested to restrain the complainant-first informant from doing any illegal activities. However, taking umbrage of the same, complainant preferred the present complaint, which is false baseless and concocted one. Learned counsel explained the circumstances in detail and submits that the allegations would not attract the provisions of the Act of 1989. Therefore, he requested to entertain the appeal and grant the relief of pre-arrest bail to the appellants in this case.

6. Learned APP for respondent No.1 and learned counsel appearing on behalf of respondent No. 2 vociferously raised objections and submitted that Section 18A of the Act of 1989 put statutory bar for exercising the powers under Section 438 of the Cr.P.C. by the Court. The appellants abused the complainant on her caste within a public view. The appellants also intentionally touched the complainant by holding her hand with an ill-intention. The circumstances reflect from the FIR are sufficient to draw inference that appellants committed an offence under the

Act of 1989. The appellants had an knowledge that complainant is from "*Mang*" community recognized as Scheduled Tribe. Therefore, there is no propriety to grant relief of anticipatory bail under Section 438 of the Cr.P.C.

7. It is to be noted that this Court in the decision of Criminal Appeal No. 787 of 2018 (***Kiran Madhukar Ingle Versus State of Maharashtra and another***), elaborately dealt with the issue of applicability of Section 18 of the Act of 1989 to entertain the application for pre-arrest bail under Section 438 of the Cr.P.C. and made observations in paragraph Nos. 13 and 15 as under :-

13. It is explicitly made clear that the Court of Sessions or High Court can entertain the application for pre-arrest bail to ascertain its maintainability. The law does not permit to reject the application for anticipatory bail merely because the case has been registered under section 3 of the Act of 1989. But, it is incumbent on the part of the Court to examine as to whether the applicant at all is a fit person to be treated as accused of the crime registered under the Act of 1989. Section 18 of the Act of 1989 does not bar judicial scrutiny of the accusation made in the complaint. When the Court is held competent to enter into scrutiny of the allegations to determine whether the person can be treated as accused of commission of offence under the Act of 1989, then question would arise as to what extent the Court would be justified to examine material to determine the *prima facie* case against him.

14. xx xx xx xx xx xx xx

15. The exposition of law as referred above unequivocally pointer to the inference that the application for anticipatory bail can be entertained only on the ground of inapplicability of the provisions

of Act of 1989 and it would be ascertainable only on perusal of recitals of the FIR or complaint and not beyond that, because once it is gathered from the FIR that the applicant is accused of committing the offence prescribed under section 3 of the Act of 1989, a bar under section 18 of the Act of 1989 would instantly operate against him. Therefore, the Courts are not permitted to enter into roving enquiry in regard to sustainability of accusation nurtured on behalf of complainant. Moreover, further scrutiny by summoning the case diary or other material to test veracity of the allegations made in the FIR also not permissible under the law.

8. In the instant appeal, the prosecution applied the provisions of section 3(1)(w)(i)(ii) of the Act of 1989 against the present appellants, which reads as under :

“3. Punishments for offences of atrocities :-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe :-

(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.”

9. Provisions of Section 3 of the Act of 1989 makes it mandatory that it is incumbent on the part of complainant *prima facie* to show in the FIR that accused is not member of Scheduled Castes or Scheduled Tribes, the alleged humiliation by way of intentional touching to her was under knowledge that she was belonging to Scheduled Caste or Scheduled Tribe category. The

opening sentence of Section 3(1) of the Act of 1989 itself shows that, "*whoever not being a member of Scheduled Castes or Scheduled Tribes*". It means that there must be *prima facie* affirmation or say in the FIR-complaint that the accused is not the member of Scheduled Castes or Scheduled Tribes. In addition, it must be clear in the FIR that accused were aware or they had knowledge that complainant belongs to Scheduled Castes or Scheduled Tribes category.

10. In the present complaint, absolutely there are no averments to the effect that both appellants-applicants are belonging from higher caste or atleast that they are not a member of Scheduled Castes or Scheduled Tribes. There are also no whisper in the FIR/complaint that both appellants had knowledge that complainant was from Scheduled Castes or Scheduled Tribes community. It is true that there are allegations that appellants hurled abuses to the complainant on caste by saying "*Mangte*". But, bare uttering word "*Mangte*" would not sufficient to draw inference that appellants had knowledge or aware about the caste of complainant, and therefore, they abused the complainant in the name of her caste to insult or humiliate her within public view. The possibility of uttering word "*Mangte*" during the course of hot exchange of words may be to abuse her more filthily can not be ruled out. All these circumstances being main and basic ingredients of Section 3(1)

(w)(i)(ii) of the Act of 1989 and the absence of the same will have a serious impact as to the allegations to constitute offence under Act of 1989.

11. In the matter-in-hand, as referred above, averments in regard to appellants that they are not the member of SC or ST community or they are belonging from higher caste, is totally absent in the alleged FIR. Moreover, recitals of the FIR are silent to point out that the appellants had any knowledge or aware about the caste of complainant as she belongs to SC or ST community. The abuses by uttering words "*Mangte*" may be towards act of abusing the complainant more filthily. Therefore, it cannot be said that allegations nurtured on behalf of complainant are sufficient to constitute the offence under the Act of 1989. In the result, statutory bar under Section 18 of the Act of 1989, would not set in operation to the facts and circumstances of the present case.

12. Taking into consideration all aspects of the matter and in spite of bar under Section 18 of the Act, 1989, for invocation of power under Section 438 of the Cr.P.C., it is still open to the Court to find out looking to the FIR of the case itself as to whether *prima facie* case is made out by the complainant against the appellants. The circumstances on record are not sufficient to arrive at the conclusion that there are material *prima facie* on record to draw adverse inference against the appellants.

Therefore, there is no impediment to entertain the application of appellants for the relief of his pre-arrest bail under Section 438 of the Cr.P.C.

13. In regard to the allegations of assault or criminal force with intent to outrage her modesty and intimidation as envisaged under Sections 354-A, 504 and 506 read with Section 34 of the IPC, I find that custodial interrogation of the appellants is not necessary for the sake of investigation. There is no recovery from the appellants nor there is any apprehension about absconding of the appellants. Most of the part of investigation has already been completed. Therefore, there is no impediment to allow present appeal for the relief of anticipatory bail in favour of appellants-accused in the present crime. Hence, appeal deserves to be allowed.

14. In sequel, the appeal stands allowed. The impugned order dated 03-01-2019 passed by learned Additional Sessions Judge, Parbhani, in Criminal Misc. Application No. 01 of 2019 filed by the appellants is hereby quashed and set-aside. The application of the appellants-applicants filed under Section 438 of the Cr.P.C. for their pre-arrest bail before the learned trial Court is hereby allowed. The appellants - (1) Nitin S/o Sampatrao Maske and (2) Baliram S/o Ganesh Raut be released on bail in the event of his arrest in connection with Crime No. 187 of 2018

registered at Bori Police Station, Ta. Jintur, District Parbhani for the offence punishable under Sections 354-A, 504, 506 of the IPC and Section 3(1)(w)(i)(ii) of the Act of 1989, on furnishing PR bond of Rs.15,000/- (Rupees Fifteen Thousand) with one solvent surety of like amount each. It is stipulated that appellants-applicants shall not indulge, directly or indirectly, in any kind of activities of tampering with the evidence of prosecution witness. The appellants/applicants shall attend the Bori Police Station, Tq. Jintur, District Parbhani on every Sunday in between 11.00 a.m. to 3.00 p.m. till filing of the charge-sheet and shall co-operate with the Investigating Officer for the sake of investigation into the crime. Inform the concerned Investigating Officer accordingly.

15. The present Criminal Appeal stands disposed of in above terms. No order as to costs.

[K. K. SONAWANE]
JUDGE

MTK.